CITY OF MENDOTA

"Cantaloupe Center Of The World"

AGENDA
MENDOTA CITY COUNCIL
Special City Council Meeting
CITY COUNCIL CHAMBERS
643 QUINCE STREET
January 18, 2023
6:30 PM

The Mendota City Council welcomes you to its meetings; Regular meetings are scheduled for the 2nd and 4th Tuesday of every month. Your interest and participation are encouraged and appreciated. Notice is hereby given that Council may discuss and/or take action on any or all of the items listed on this agenda. **Please turn your cell phones on vibrate/off while in the council chambers.**

Any public writings distributed by the City of Mendota to at least a majority of the City Council regarding any item on this regular meeting agenda will be made available at the front counter at City Hall located at 643 Quince Street Mendota, CA 93640, during normal business hours 8 AM – 5 PM.

In compliance with the Americans with Disabilities Act, individuals requiring special assistance to participate at this meeting please contact the City Clerk at (559) 655-3291. Notification of at least forty-eight hours prior to the meeting will enable staff to make reasonable arrangements to ensure accessibility to the meeting.

CALL TO ORDER

ROLL CALL

FLAG SALUTE

FINALIZE THE AGENDA

1. Adjustments to Agenda.

2. Adoption of final Agenda.

CITIZENS ORAL AND WRITTEN PRESENTATIONS

At this time members of the public may address the City Council only on matters listed on the agenda. Please complete a "request to speak" form and limit your comments to THREE (3) MINUTES. Please give the completed form to City Clerk prior to the start of the meeting. All speakers shall observe proper decorum. The Mendota Municipal Code prohibits the use of boisterous, slanderous, or profane language. All speakers must step to the podium, state their names and addresses for the record. Please watch the time.

643 Quince Street Mendota, California 93640
Telephone: (559) 655-3291 Fax: (559) 655-4064
TDD/TTY 866-735-2919 (English) TDD/TTY 866-833-4703 (Spanish)
ci.mendota.ca.us

PUBLIC HEARING

1. Public hearing to consider and review the status of default, entitlements, and termination of development agreement with Odyssey Agricultural Development, LLC, Odyssey Agricultural Holdings, LLC, and Valley Agricultural Holdings, LLC, regarding the construction and operation of a cannabis cultivation, processing, and distribution facility on approximately 36 acres (portion of APN 013-030-68ST) located at 418 West Belmont Ave, Mendota, California 93640.

    a. *Receive report from City Manager Gonzalez*
    b. *Inquiries from City Council to staff*
    c. *Mayor Martinez opens the public hearing*
    d. *Once all comment has been received, Mayor Martinez closes the public hearing*
    e. *Council provides direction to staff on how to proceed*

ADJOURNMENT

CERTIFICATION OF POSTING

I, Antonio Pizano, Deputy City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council special meeting of January 18, 2023, was posted on the outside bulletin board located at City Hall, 643 Quince Street on Tuesday, January 17, 2023 at 5:00 p.m.

Antonio Pizano, Deputy City Clerk

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CRISTIAN GONZALEZ, CITY MANAGER

SUBJECT: PUBLIC HEARINGS TO CONSIDER AND REVIEW STATUS OF DEFAULT, ENTITLEMENTS, AND TERMINATION OF DEVELOPMENT AGREEMENT WITH ODYSSEY AGRICULTURAL DEVELOPMENT, LLC, ODYSSEY AGRICULTURAL HOLDINGS, LLC, AND VALLEY AGRICULTURAL HOLDINGS, LLC

DATE: JANUARY 18, 2023

ISSUE

The Planning Commission and the City Council of the City of Mendota are holding hearings to consider and review the status of default, entitlements, and termination of the development agreement with Odyssey Agricultural Development, LLC, Odyssey Agricultural Holdings, LLC, and Valley Agricultural Holdings, LLC, regarding the construction and operation of a cannabis cultivation, processing, and distribution facility on approximately 36 acres (portion of APN 013-030-68ST) located at 418 West Belmont Avenue, Mendota, California 93640.

BACKGROUND

Odyssey Agricultural Development, LLC ("OAD"), Odyssey Agricultural Holdings, LLC ("OAH"), and Valley Agricultural Holdings, LLC ("VA"; together with OAD and OAH, the "Developers") own and operate a commercial cannabis business within the City's borders. This business is a private enterprise subject to a development agreement with the City (the "DA"; **Exhibit 1**) ensuring legal compliance with the City's applicable licensing and zoning requirements as required by the Mendota Municipal Code ("MMC").

1. Approval of Developers' DA

In 2017, the City amended the MMC to create a commercial cannabis overlay district to "serve and promote the public health, safety, and welfare of the citizens of Mendota, to facilitate the establishment of permitted commercial cannabis businesses within the city while ensuring that such businesses do not interfere with other lawful land uses, and to provide new sources of revenue to fund city services." (Mendota Ord. No. 17-13; MMC, § 17.99.010, subd. (B).) The City identified approximately fifty acres of unused, surplus land it owned, and approved publication of a request for proposals seeking businesses interested in leasing and developing that land for commercial cannabis operations within the City. (Mendota Reso. No. 17-62.) Shortly thereafter, the City withdrew its request for proposals. (Mendota City Council Meeting Minutes, January 9, 2018.)

In 2018, the City revised its earlier request for proposals and reissued it, seeking businesses interested in purchasing and developing the land at issue from the City for any useful purpose, including commercial cannabis activity. (Mendota Reso. No. 18-74.) The City reviewed responses to its request for proposals and approved entering into negotiations with VA (also known as the Axiom Group at that time) regarding the surplus land. (See Mendota City Council Meeting Minutes, January 22, 2019, and February 12, 2019.)

In October 2019, the City approved Resolution No. 19-79, approving a purchase and sale agreement (the "PSA") whereby VA agreed to purchase the City's surplus property for its full appraised value. (Mendota Reso. No. 19-79; Mendota City Council Meeting Minutes, October 22, 2019.) Among other things, the PSA required VA to obtain development entitlements from the City and state, including full compliance with the California Environmental Quality Act ("CEQA"; Pub. Res. Code, §§ 21000, et seq.), at its own expense.

In 2020, VA submitted Application No. 20-23 for a development agreement with the City. The City, as the lead agency responsible for approving a project in its boundaries under CEQA, engaged with environmental consultants regarding VA's project and eventually adopted a mitigated negative declaration and mitigation monitoring and reporting program indicating the project would not have a substantial impact on the environment if using the proposed mitigation measures. (Mendota Reso. No. 21-01.) On January 26, 2021, the City approved an amendment to the PSA to split the project between two entities, thirty-six acres of which were to be purchased by OAH. (Mendota Reso. No. 21-11.) The City also approved the DA with the Developers, which was not challenged within the ninety-day statute of limitations. (Mendota Ord. No. 21-03; Gov. Code, § 65009, subd. (c)(1).) The City's sale of thirty-six acres to OAH closed on or about March 22, 2021.

The City recorded the DA with the Office of the Fresno County Recorder on April 16, 2021.

2. Developers' Request for Conditional Use Permit Revisions

Developers requested modifications of their site plans which were approved alongside their Conditional Use Permit ("CUP"; **Exhibit 2**) in Planning Commission Resolution No. 20-07 and DA in City Council Ordinance No. 21-03. As presented during the August 24, 2021, City Council meeting, the revised site plans contemplate dividing the multiple commercial cannabis license uses from within one (1) 45,000 square-foot building to eight (8) separate structures of the following sizes:

- One (1) 9,000 square-foot greenhouse building;
- Two (2) 10,000 square-foot processing/manufacturing buildings;
- One (1) 10,000 square-foot building for corporate offices and employee break rooms;
- One (1) 18,000 square-foot distribution building;
- One (1) 30,000 square-foot drying/processing building;
- One (1) 30,000 square-foot manufacturing/drying/processing building; and
- One (1) 64,000 square-foot indoor cannabis cultivation building.

As with the original site plans, the revised site plans contemplate using the remainder of the site for outdoor cannabis cultivation. City staff's discussions Developers' representatives clarified the proposed site reorganization would not affect the total square footage allocated to outdoor cannabis cultivation on the property.

The CUP tasks the City with monitoring the operation of your facility for violations of the conditions of approval. (**Exhibit 2**, CUP, Operations, § 4.) As approved, the site plans should "depict locations and dimensions of existing and proposed features, utilities, and other improvements." (**Exhibit 2**, CUP, General & Site, § 9.)

> Development and operation of the project site shall be in substantial conformance with the Site Plan dated September 29, 2020 and the operational statement dated October 13, 2020 as incorporated herein by reference. The City Planner shall determine the extent to which incremental or minor changes to the site plan, the landscape plan, and/or the operational statement meet this requirement.

(**Exhibit 2**, CUP, General & Site, § 16.)

Following the approval of the CUP, the site plan was flipped on its vertical axis to accommodate site access. This modification was deemed incremental or minor by the City Planner, and no further action was required beyond filing an updated site plan.

In contrast, however, the City Planner has indicated the proposed permanent structure revisions and expansions detailed on the revised site plan discussed above are potentially perceived as resulting in substantial, increased industrial uses of the site, regardless of whether the commercial cannabis license uses are listed in the CUP and DA. Also, the existing site plans did not contemplate the expansion of Developers' operations in multiple "phases" as presented during the August 24, 2021, City Council meeting. Accordingly, an amendment to the CUP to incorporate the revised site plans and phases of construction, supported by a CEQA addendum indicating no new environmental impacts will occur as a result of these modifications, might be required here in the future.

On September 21, 2021, the City sent a letter to Developers outlining the position above, and stating:

> This letter shall serve as notice that, in accordance with Article XI, Section 7 of the California Constitution, the City will exercise its discretion not to expend its enforcement resources to prevent your development of the project site during the pendency of the CUP amendments discussed above. This enforcement discretion is being exercised on a short-term, temporary basis only in recognition of the brief duration of the uses discussed above and your urgent need to proceed to harvest the plants grown in accordance with your existing CUP and DA.

> Please be advised that, this letter is non-binding and shall not create any obligation or liability (including any obligation to start or continue negotiations), and no course of conduct or dealing (including, but not limited to, discussions, negotiations, emails, or other correspondence or the exchange of draft documents) shall create any binding obligations on the City's behalf other than fully executed and delivered approvals. (See Cal. Code Regs., tit. 14, §§ 15004, subd. (b)(4), and 15352.) Any confirmation by the City that it has an interest or willingness to perform as laid out herein shall not foreclose the City's future consideration of all relevant alternatives or mitigation measures that CEQA may otherwise require to be considered, including, but not limited to, the alternative of not moving forward with amendments to the project at all. All future project approvals are conditions upon your successful compliance with all statutory and regulatory requirements associated with the successful implementation of the same (e.g. obtaining all discretionary permits, including, but not limited to: CEQA documentation, review, and approvals; final adjudication of any legal challenges based on CEQA; and all environmental, title, physical, water quality, and economic aspects of the project having been assessed and resolved sufficiently for the issuance of an amended conditional use permit).
>
> Accordingly, before engaging in any temporary or permanent construction that conflicts with your existing site plans, you must first execute the attached Acknowledgment and Waiver. In so doing, you will acknowledge your understanding that the City will be conducting a comprehensive review of your forthcoming application for an amended CUP and, as a result, you may be required to comply with new or different conditions of approval or regulations. In addition, you will agree that, if, after conducting its review, the City adopts new or different conditions of approval or regulations, you will comply with all such regulations and will not claim that your use of the Property constitutes a legal non-conforming use.

(**Exhibit 3**.) Developers signed an Acknowledgment and Waiver indicating any work on their project site was pending future approval of a CUP amendment, including approvals of other supporting documents and decisions related thereto. (**Exhibit 4**.) Throughout 2022, the Developers worked to improve their property as outlined above.

3. 2022 DA Compliance and Public Hearings

Developers' DA requires them to make Quarterly Payments in a minimum annual amount of $600,000.00, representing the Developers' Public Benefit Fee obligations. (**Exhibit 1**, DA,

§ 4.2, subd. (a)(2)(iii).) On February 2, 2022, $150,000.00 came due, but went unpaid. (See **Exhibit 5**.)

At its February 22, 2022, regular City Council meeting, the City received presentations from both Developers and Boca Del Rio Agriculture, LLC ("Boca"; Developers' neighbors conduct similar commercial cannabis activities subject to their own development agreement with the City) regarding the "state of the local cannabis industry" and the status of their respective developments. (See Mendota City Council Meeting Minutes, February 22, 2022.) During the presentation, Developers explained they have invested $8,200,000.00 in capital for infrastructure improvements, spent $3,400,000.00 in operating expenses, paid $1,500,000.00 in state tax, and provided approximately $600,000.00 in Public Benefit Fees to the City with only $462,391 in total revenue. Developers asserted they had taken approximately $13,200,000.00 in losses as a result of their operations in the City as of February 22, 2022. To that end, Developers indicated they lost 5-7% of their crop to a wind storm in the end of 2021. Developers stated there was a 50-90% decrease in the value of wholesale cannabis due to a shortage of retail outlets and overregulation throughout California.

After letting the developers explain their positions, the City Council provided informal direction to City staff regarding the formation of an ad-hoc subcommittee to discuss potential solutions to the developers' financial issues. On February 28, 2022, the City Council held a special meeting and established this subcommittee. (See Mendota City Council Meeting Minutes, February 28, 2022.) To date, no report has been received from the subcommittee regarding any meeting with or results of a meeting with the developers.

Also on February 28, 2022, the City sent Developers a Notice of Non-Performance Late Fee identifying $150,000.00 was past due and that a penalty of $1,500 had been imposed as a result. (See **Exhibit 1**, DA, § 4.5; **Exhibit 5**.) On March 25, 2022, the City sent Developers a Notice of Interest on Unpaid Non-Performance Late Fee indicating interest in the amount of 18% per annum would begin applying to the $1,500 late fee. (See **Exhibit 5**.)

On April 13, 2022, the City Manager contacted Developers via email to state that the City Council expects compliance with all DA payments and conditions as soon as possible. On or about April 18, 2022, Developers sent a picture of a check for the outstanding amounts due to the City Manager. On May 20, 2022, the City Manager contacted Developers to confirm Developers' $150,000.00 check was returned for insufficient funds. In response, Developers wired a payment of $150,000.00 to the City, which cleared, satisfying Developers' first of four Public Benefit Fee Quarterly Payment obligations for 2022.

On May 2, 2022, $150,000.00 came due, but went unpaid. (See **Exhibit 6**.) On May 20, 2022, the City sent Developers a Notice of Non-Performance Late Fee identifying $150,000.00 was past due and that a penalty of $1,500 had been imposed as a result. (See **Exhibit 1**, DA, § 4.5; **Exhibit 6**.)

On July 1, 2022, the State of California stopped charging commercial cannabis cultivators, like Developers, the state cultivation tax. (See https://www.cdtfa.ca.gov/formspubs/L856.pdf [State announcement of tax removal].)

Government Code section 65865.1 provides development agreements "shall include provisions requiring periodic review at least every 12 months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement." (Gov. Code, § 65865.1.) "If, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement." (Gov. Code, § 65865.1.)

Section 8.2 of the DA provides:

> **Section 8.2. Annual Review.** City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer, OAH, and/or VA and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or fax to Developer, OAH, and/or VA a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) calendar days prior to such periodic review. Developer, OAH, and/or VA shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer, OAH, and/or VA shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable.

(**Exhibit 1**, DA, § 8.2.)

On Tuesday, July 5, 2022, the City of Mendota provided Developer a Notice of Annual Review of Development Agreement as required by Government Code section 65865.1 and Section 8.2 of the DA. (**Exhibit 7**.)

On July 12, 2022, Developers appeared before the City Council for said annual review hearing. (See Mendota City Council Meeting Minutes, July 12, 2022.) During the annual review hearing, Developers reiterated their concerns regarding the DA's fees and the City's generally applicable fees related to commercial cannabis activity. The City Council requested Developers come into compliance with the DA and present alternative fee structures for consideration.

On July 21, 2022, Developers sent a letter to the City Manager outlining their work under the DA, requesting reforms to the City's generally applicable fees related to commercial cannabis activity, and requesting a fee deferral in the amount of $600,000.00 for "Q2 2022, Q3 2022, Q4 2022 and Q1 2023. (**Exhibit 8**.) Thereafter, Developers proposed beginning repayment of those amounts in twelve quarterly installments of $50,000.00 beginning in Q2 2023.

On August 2, 2022, $150,000.00 came due, but went unpaid. (See **Exhibit 9**.) On August 12, 2022, the City sent Developers a Notice of Non-Performance Late Fee identifying $150,000.00 was past due and that a penalty of $1,500 had been imposed as a result. (See **Exhibit 1**, DA, § 4.5; **Exhibit 9**.) This brought the total unpaid Public Benefit Fees due to $300,000.00.

On September 30, 2022, the City sent Developers a Request for Audit Records and Request for Cure of Default. (See **Exhibit 10**.) This letter requested all audit records due and reportable to the City pursuant to Article 4 of the DA. (See **Exhibit 1**, DA, Art. IV.) The notice also stated:

> The City Council reviewed Developers' proposal dated July 21, 2022, wherein Developers requested a year's forbearance of the public benefit fees ($600,000/year) with quarterly repayment installments to take place over the following three years ($50,000/quarter in addition to the regularly scheduled $150,000/quarter). The City cannot grant this request as it amounts to an interest-free loan which is an impermissible gift of public funds.
>
> Developers are currently in default of the Development Agreement for failing to pay the Public Benefit Fees due to City on May 2, 2022, in the amount of $150,000 and August 2, 2022, in the amount of $150,000, for a total sum of $300,000 currently past due to the City. (See Development Agreement, §§ 4.2, subd. (a)(2)(iii), 4.2, subd. (b), 4.3, 4.5, 4.6.) Pursuant to Section 8.1, subdivisions (a) and (e), of the Development Agreement, the City demands that Developers cure this default by paying the City all outstanding amounts due within thirty days of the date of this notice. Such deadline to cure Developers' default expires on October 29, 2022.

(**Exhibit 10**.) Developers failed to pay the outstanding amounts due by October 29, 2022, and were in officially in default of the DA after that date. (See **Exhibit 1**, DA, § 8.1.)

On October 11, 2022, Developers appeared at a City Council meeting to voice their concerns and explain their continued inability to comply with the DA's fee provisions in the near term. (See Mendota City Council Meeting Minutes, dated October 11, 2022.) Among other things, Developers cited substantial investments into their facilities, State licensing fees, and lack of profitability as reasons for failing to pay the outstanding amounts due to the City.

On November 2, 2022, $150,000.00 came due, but went unpaid. (See **Exhibit 11**.) On November 21, 2022, the City sent Developers a Notice of Non-Performance Late Fee identifying $150,000.00 was past due and that a penalty of $1,500 had been imposed as a result. (See **Exhibit 1**, DA, § 4.5; **Exhibit 11**.) This brought the total unpaid Public Benefit Fees due to $450,000.00.

On November 18, 2022, the City sent Developers a Notice of Default and Demand for Cure. (See **Exhibit 12**.) This notice stated:

> Developers are currently in default of the Development Agreement for failing to pay the Public Benefit Fees due to City on: May 2, 2022, in the amount of $150,000; August 2, 2022, in the amount of $150,000; and November 2, 2022, in the amount of $150,000, for a total sum of $450,000 currently past due to the City. (See Development Agreement, §§ 4.2, subd. (a)(2)(iii), 4.2, subd. (b), 4.3, 4.5, 4.6.) Pursuant to Section 8.1, subdivisions (a) and (e), of the Development Agreement, the City demands that Developers cure this default by paying the City all outstanding amounts due within thirty days of the date of this notice. Such deadline to cure Developers' default expires on December 18, 2022.

(**Exhibit 12**.) Developers failed to pay the outstanding amounts due by December 18, 2022, and remain in official default under the DA. (See **Exhibit 1**, DA, § 8.1.)

On December 13, 2022, Developers sent another letter to the City Manager requesting reforms to the City's generally applicable fees related to commercial cannabis activity as applying to 2% of gross receipts in 2023 and beyond, and requesting repayment of the outstanding $450,000.00 due to the City as follows:

Payment Date	**Payment Amount**
January 2023	$100,000
April 1, 2023	$35,000
July 1, 2023	$35,000
October 1, 2023	$35,000
January 1, 2024	$35,000
April 1, 2024	$35,000
July 1, 2024	$35,000
October 1, 2024	$35,000
January 1, 2025	$35,000
April 1, 2025	$35,000
July 1, 2025	$35,000

(See **Exhibit 13**.)

4. 2023 DA Compliance and Default Review Hearing

In light of Developers' default status, the City issued Notices of Development Agreement Review Hearings for January 18, 2023, by mailing, posting, and newspaper publication on or before January 8, 2023. (See **Exhibit 1**, DA, § 8.1; **Exhibit 14**; Gov. Code, §§ 65865, 65867, 65868, 65090, 65091, 65094.)

On January 5, 2023, Developers contacted City staff to request a formal explanation of the City's current position regarding Developers' letter dated December 13, 2022. (See **Exhibit 13**.) City staff responded, stating, "The City received your proposals to amend the development agreement. To date, the City has not accepted either proposal, so the parties continue to be bound by the development agreement's terms."

On or about January 11, 2023, Developers sent the City $100,000.00 via wire transfer. On January 17, 2023, the City sent Developers a letter via email acknowledging receipt of the $100,000.00 and stating it had applied the $100,000.00 payment to the $450,000.00 due to the City under the DA. (See **Exhibit 15**.)

On January 13, 2023, City staff met with Developers to discuss the logistics of the instant hearing.

Throughout the latter half of 2022 and early weeks of 2023, the City's attorneys were engaged defending the City after the City was named in a lawsuit filed by one of Developers' contractors. The lawsuit, which is ongoing as of the date of this Staff Report, alleges the Developers failed to pay Calzona Ag Management, Inc., more than $400,000.00. (See Fresno County Superior Court, Case No. 22CECG01617.) The City has since obtained a dismissal from the lawsuit at its own legal expense. (See **Exhibit 16**.)

Developers remain in default under the DA and owe the City $350,000.00 as of the date of this Staff Report.

ANALYSIS

The instant hearing was set for the City's Planning Commission and City Council to consider the status of Developer's default under the DA and provide direction to City staff. (See **Exhibits 12** and **14**.)

1. Relevant DA Provisions

The DA's terms relevant to public benefit fees, default, and termination are as follows:

> **Section 4.2. Public Benefit.**
>
> (a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer, OAH, and VA that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that is commensurate with the private benefits conferred on Developer, OAH, and VA (the "Public Benefit Fee"). Developer, OAH, and VA acknowledge that the Public Benefit Fees provided for herein are greater than the annual fee provided for in Mendota Municipal Code section 17.99.070 and, despite this fact, voluntarily agree to

pay the fees contemplated herein, acknowledging that the private benefits conferred are of equal or greater consideration to the fees, and waives any right to challenge said fees as a violation of any law. In consideration of the foregoing, Developer, OAH, and/or VA shall remit to City:

(1) A one-time Public Contribution Payment in the amount of ONE HUNDRED AND TWENTY THOUSAND DOLLARS ($120,000) (the "Contribution Payment") within thirty (30) days of Developer, OAH, and/or VA closing escrow on that certain Purchase and Sale Agreement and Joint Escrow Instructions entered into by and between Developer, OAH, VA, and City on or about October 22, 2019, and thereby, Developer, OAH, and/or VA obtaining fee title interest to the Property. City acknowledges that Developer's, OAH's, and/or VA's obligation to remit the Contribution Payment to the City, or any portion thereof, is strictly conditioned on (a) the Agreement having obtained final City approval, (b) Developer having obtained the Conditional Use Permit as discussed in Section 2.5 above, (c) Developer having obtained any and all "Subsequent Entitlements, Approvals, and Permits" as discussed in Section 2.6 above, and (d) Developer having obtained any and all "Subsequent City Approvals" as discussed in Section 3.1 above.

(2) As described in Section 17.99.070 of the Mendota Municipal Code, an annual "Public Benefit Fee" in the greatest amount of the following, as applicable:

(i) FIVE DOLLARS ($5.00) per square foot for so long as the Developed Portions of the Property are less than two hundred thousand (200,000) square feet; or

(ii) FOUR DOLLARS ($4.00) per square foot for so long as the Developed Portions of the Property are between two hundred thousand (200,000) square feet and four hundred ninety-nine, nine hundred ninety-nine thousand (499,999) square feet; or

(iii) For so long as the Developed Portions of the Property are five hundred thousand (500,000) square feet or greater, the greater amount of the following:

(A) SIX HUNDRED THOUSAND DOLLARS ($600,000); or

(B) Four percent (4%) of the Project's annual Gross Receipts, as defined in Section 1.4.

To the extent that Section 4.2(a)(2) is applicable for the calculation of the Public Benefit Fee, said fee will be adjusted pursuant to the Consumer Price Index for the Fresno/Clovis metropolitan area (All Urban Consumers) published by the United Stated Department of Labor, Bureau of Labor and Statistics ("Index"). The adjustment shall be made based on the first Index published in the year for which the Public Benefit Fee is paid and shall be subject to a maximum increase of 2% in any given year.

(3) The annual Public Benefit Fee described in Section 4.2, above, shall be paid in quarterly installments on the first (1st) business day of every third (3rd) month ("Quarterly Payment").

(b) Developer, OAH, and/or VA shall remit the Contribution Payment and the Public Benefit Fee as applicable, to City as described in subdivisions (a.1), (a.2), and (a.3) of this Section. **Failure to remit the** Contribution Payment and **Public Benefit Fee, as applicable, is a material breach of this Agreement and shall be sufficient grounds for revocation of all entitlements associated with the Project.** For purposes of clarity and avoidance of doubt, the Parties agree and acknowledge that Developer's, OAH's, and/or VA's obligation to commence making the Public Benefit Fee payment to the City shall commence on the first day of Project operation when the first crop is planted and not prior to that date.

(**Exhibit 1**, DA, § 4.2, emphasis added.)

Section 4.5. Late Fee.

Developer, OAH, and VA acknowledge that, to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Liquidated damages and interest provisions are necessary to assist City in compliance review and enforcement actions. If Developer, OAH, or VA fail to make any payment when due as required by this Agreement, including the Public Benefit Amount, City may impose a "Non-Performance Late Fee." A Non-Performance Late Fee of one percent (1%) shall be applied to all past due payments. City shall deliver to Developer, OAH, and/or VA a "Notice of Non-Performance Late

Fee," attached hereto as Exhibit C. Payment of the Non-Performance Late Fee shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee. The Parties hereto acknowledge and agree that the sums payable under this Section 4.5 shall constitute liquidated damages and not penalties and are in addition to all other rights of the City, including the right to call a default. The Parties further acknowledge that (i) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (ii) the amounts specified herein bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with any failure by Developer, OAH, or VA to remit payment as required by this Agreement, (iii) one of the reasons for the Parties' agreement as to such amounts was the uncertainty and cost of litigation regarding the question of actual damages, and (iv) the Parties are sophisticated business parties and have been represented by sophisticated and able legal counsel and negotiated this Agreement at arm's length.

Section 4.6. Interest on Unpaid Non-Performance Late Fee.

If Developer, OAH, and/or VA fail to pay the Non-Performance Late Fee after City has delivered the Notice of Non-Performance Late Fee, then, in addition to the principal amount of the Non-Performance Late Fee, Developer, OAH, and/or VA shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Late Fee, from a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee.

(**Exhibit 1**, DA, §§ 4.5, 4.6.)

Section 8.1. General Provisions.

(a) Subject only to any extensions of time by mutual consent in writing, or as otherwise provided herein, the failure or delay by any Party to perform in accordance with the terms and provisions of this Agreement shall constitute a default. Any Party alleging a default or breach of this Agreement ("Charging Party") shall give the other Party ("Charged Party") not less than thirty (30) calendar days' written notice, which shall specify the nature of the alleged default and the manner in which the default may be cured. During any such thirty (30) calendar day period, the Charged Party shall not be considered in default for purposes of

termination of this Agreement or institution of legal proceedings for the breach of this Agreement.

(b) **After expiration of the thirty (30) calendar day period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within thirty (30) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit or other entitlement related to or concerning the Project**.

(c) **Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868** or the comparable provisions of the Mendota Municipal Code within thirty (30) calendar days from the expiration of the thirty (30) day notice period.

(d) **Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional five (5) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party**.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party may give written notice of termination of this Agreement, specifying in the notice the alleged nature of the default and potential actions to cure said default where appropriate. If the alleged default is not cured in thirty (30) calendar days or within such longer period specified in the notice or the defaulting Party is not diligently pursuing a cure or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this

> Agreement may be terminated by the non-defaulting Party by giving written notice.
>
> (f) **In the event Developer, OAH, and/or VA are in default under the terms and conditions of this Agreement, no permit application shall be accepted by City nor will any permit be issued to Developer, OAH, and/or VA until the default is cured, or the Agreement is terminated**.
>
> (g) In the event that a person or entity other than the Developer, OAH, and/or VA are in default, Developer, OAH, and/or VA shall use commercially reasonable efforts to bring the person or entity in default into compliance. The City shall provide the Developer, OAH, and/or VA with notice and opportunity to cure as provided for in paragraph (a) through (e) above, except that the time periods in paragraphs (a), (b), (c), and (e) shall be ninety (90) days.

(**Exhibit 1**, DA, § 8.1, emphasis added.)

> **Section 8.5. Cumulative Remedies of Parties.**
>
> In addition to any other rights or remedies, City, Developer, OAH, and/or VA may institute legal or equitable proceedings to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to Section 8.1(c) of this Agreement.

(**Exhibit 1**, DA, § 8.5.)

2. Potential Hearing Results

In light of the provisions reproduced in the previous section, the City Council must consider Developers' payment default before any other entitlement-based decisions may be issued. (**Exhibit 1**, DA, § 8.1, subd. (f).)

In the event the City Council decides it wants to pursue a compromise with Developers, it may indicate so by directing City staff to prepare an amendment to the DA and schedule public hearings required to effect the same. Alternatively, the City Council could direct City staff to meet with all similarly situated commercial cannabis developers to discuss a City-wide revision of commercial cannabis fees and schedule public hearings required to effect the same.

In the event the City Council decides it wants to pursue its legal remedies against Developers based on their default, it may indicate so by directing City staff to pursue termination of the DA, including, but not limited to, holding public hearings to terminate the DA and/or filing suit to

recover unpaid fees. If the City Council pursues this path, Developers are entitled to an additional five calendar days from the instant review hearing to cure the default before the City may proceed with issuing a notice of termination. (**Exhibit 1**, DA, § 8.1, subd. (c).) In that scenario, Developers may avoid termination of the DA by paying the City all outstanding monies due on or before January 23, 2023.

FISCAL IMPACT

Developers currently owe the City $350,000.00 under the applicable provisions of the DA. The instant review hearing required a public notice that cost the City $852.96 plus legal fees yet to be determined. (See **Exhibit 14**.) The City also incurred legal fees in an amount yet to be determined as a result of being named in a lawsuit by one of Developers' contractors. (See **Exhibit 16**.)

The fiscal impact of the many potential City actions related to Developers' DA and generally applicable revisions to the City's cannabis regulations are not quantifiable in the abstract.

RECOMMENDATIONS

Staff recommends the City Council discuss Developers' performance under the DA, consider the recommendations of the Planning Commission, and provide direction to City staff regarding:

1. Outstanding monies due to the City under the DA;
2. Next steps regarding City enforcement of Developers' DA; and/or
3. City fees charged to cannabis businesses, either generally or as to Developers specifically.

Attachments:

1. Development Agreement
2. Conditional Use Permit
3. City Letter regarding Request for Conditional Use Permit Modifications
4. Acknowledgment and Waiver from Odyssey Agricultural Holdings, LLC
5. Invoice due February 2, 2022; Notice of Non-Performance Late Fee dated February 28, 2022; Notice of Interest on Unpaid Non-Performance Late Fee dated March 25, 2022
6. Invoice due May 2, 2022; Notice of Non-Performance Late Fee dated May 20, 2022
7. Staff Report and Notice of Development Agreement Annual Review Hearing regarding July 12, 2022, Hearing
8. Developers' Letter dated July 21, 2022
9. Invoice due August 2, 2022; Notice of Non-Performance Late Fee dated August 12, 2022
10. Request for Audit Records; Request for Cure of Default dated September 30, 2022.
11. Invoice due November 2, 2022; Notice of Non-Performance Late Fee dated November 21, 2022
12. Notice of Default and Demand for Cure dated November 18, 2022

13. Developers' Letter dated December 13, 2022
14. Notice of Development Agreement Review Hearing on January 18, 2023
15. City Letter Acknowledging Payment dated January 17, 2023
16. Notice of Dismissal of City of Mendota from First Amended Complaint filed by Calzona Ag Management, Inc.

EXHIBIT 1

AGENDA

43

2021-0078341

FRESNO County Recorder
Paul Dictos, CPA
Wednesday, May 12, 2021 11:32:09 AM
Titles: 1 Pages: 43

Fees:	$0.00
CA SB2 Fee:	$0.00
Taxes:	$0.00
Total:	$0.00
CITY OF MENDOTA	

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Mendota
643 Quince Street
Mendota, California 93640
Attn: Cristian Gonzalez

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §6103 and §27388.1(2)(D)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 26th day of March, 2021, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California ("City"), **ODYSSEY AGRICULTURAL DEVELOPMENT, LLC**, a California limited liability company ("Developer"), **ODYSSEY AGRICULTURAL HOLDINGS, LLC**, a California limited liability company ("OAH"), and **VALLEY AGRICULTURAL HOLDINGS, LLC**, a California limited liability company ("VA"). City, Developer, OAH, or VA may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

A. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.

B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.

C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

D. Government Code section 65865 requires an applicant for a development agreement to hold a legal or equitable interest in the real property that is the subject of the development agreement. On or about October 22, 2019 the City and VA entered into that certain Purchase and Sale Agreement to purchase that certain real property located approximately one-quarter mile east of W. Belmont Avenue, and approximately one-half mile north of Guillan Park Drive, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-030-68ST (the "Site"), as more particularly described in the legal descriptions attached hereto as **Exhibit A** and depicted on the Site Map attached hereto as **Exhibit B**.

E. The members of VA determined that it would be in their respective best interests to cause VA to assign the right to purchase the Site under the Purchase and Sale Agreement to two single-purpose entities: (1) OAH; and (2) **BOCA DEL RIO HOLDINGS, LLC** ("BDR"). On January 26, 2021, the City Council of the City of Mendota approved a third amendment to the Purchase and Sale Agreement, permitting VA to assign its right to purchase the Property to BDR and OAH. VA has assigned its interest in approximately thirty-five (35) acres of the Property to OAH.

F. Prior to close of escrow on Developer's purchase of the Property, Developer shall submit an application to the City to subdivide the Property into two (2) separate legal parcels, with the first parcel being sixty percent (60%) of the Property, or approximately thirty-five (35) acres (to be operated by Developer, OAH, and/or VA), and the second parcel being forty percent (40%) of the Property, or approximately twenty-four (24) acres (to be operated by **BOCA DEL RIO AGRICULTURE, LLC**, a California limited liability company; BDR; and/or VA).

G. Developer, OAH, and/or VA proposes to improve, develop, and use the Property as a guard-gated and secure Cannabis Facility for cultivation, manufacturing, and distribution of Cannabis and Cannabis Products, as defined in Section 1.4 of this Agreement, in strict accordance with California Cannabis Laws, as defined in Section 1.4 of this Agreement, as they may be amended from time to time, and the Municipal Code of the City of Mendota as it existed on the Effective Date (the "Project"). Developer, OAH, and/or VA intend to develop the Project in two distinct phases, specifically: (1) the first phase of the Project will consist of land development and the construction of "Outdoor and Mixed Light Cultivation" structures as defined in Section 1.4 of this agreement, located in various areas throughout the Site ("Phase I"), and (2) the second phase of the Project may consist of the construction of a "headhouse" used for the processing of harvested cannabis, administrative offices, employee breakroom(s), restrooms, and other ancillary Project needs ("Phase 2").

H. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.

I. On September 12, 2017, the City Council of Mendota ("City Council") adopted Ordinance No. 17-13, creating the Commercial Cannabis Overlay District and establishing zoning limitations and requirements for all cannabis businesses located therein, including the proposed

cannabis facility to be located at the Site.

J. On June 11, 2019, the City Council adopted Ordinance No. 19-06, establishing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City.

K. Prior to the City's adoption of Ordinance No. 19-06, VA submitted a request to the City for consideration of a development agreement for the Project pursuant to the requirements of Chapter 17.99 of the Mendota Municipal Code.

L. On September 8, 2020, the City Council adopted Ordinance No. 20-16, establishing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City.

M. Government Code § 65867 requires the Planning Commission to hold a public hearing to review an application for a development agreement.

N. On December 29, 2021, after a duly noticed and held meeting in accordance with Government Code § 65867, the City's Planning Commission voted to recommend approval of VA's application for a development agreement for the Project.

O. On January 12, 2021, the City Council, in a duly noticed public hearing, introduced and conducted the first reading of Ordinance No. 21-XX, an Ordinance to Approve a Development Agreement by and Between the City of Mendota and Valley Agricultural Holdings, LLC.

P. Pursuant to Government Code section 65867.5, on January 26, 2021, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 21-~~XX~~ 05.

Q. This Agreement is entered into pursuant to the Development Agreement Statute and the Mendota Municipal Code.

R. City, Developer, OAH, and VA desire to enter into this Agreement to: (i) facilitate the orderly development of the Site in general and specifically to ensure that such development is consistent with Title 17 of the Mendota Municipal Code; (ii) create a physical environment that is consistent with, complements, and promotes the purposes and intent of the Commercial Cannabis Overlay District and the regulations adopted therewith; (iii) protect natural resources from adverse impacts; and (vi) reduce the economic risk of development of the Site to both City, Developer, OAH, and VA .

S. The Parties intend through this Agreement to allow Developer, OAH, and/or VA to develop and manage the Project in accordance with the terms of this Agreement.

T. The City Council has determined that this Agreement is consistent with City's General Plan and have conducted all necessary proceedings in accordance with City's Municipal Code for the approval of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are

hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

ARTICLE 1
GENERAL PROVISIONS

Section 1.1. Findings. City hereby finds and determines that entering into this Agreement furthers the public health, safety, and general welfare and is consistent with City's General Plan, including all text and maps in the General Plan.

Section 1.2. Recitals. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of Articles 1 through 10 of this Agreement, the provisions of Articles 1 through 10 shall prevail.

Section 1.3. Exhibits. The following "Exhibits" are attached to and incorporated into this Agreement:

Designation	Description
Exhibit A	Legal Description (Entire Site)
Exhibit B	Site Map (Entire Site)
Exhibit C	Legal Description (Developer/OAH/VA Parcel)
Exhibit D	Site Map (Developer/OAH/VA Parcel)
Exhibit E	Notice of Non-performance Late Fee
Exhibit F	Notice of Termination
Exhibit G	Assignment and Assumption Agreement

Section 1.4. Definitions. In this Agreement, unless the context otherwise requires, the terms below have the following meaning:

(a) "Additional Insureds" has the meaning set forth in Section 6.1.

(b) "Additional License" means a state license to operate a cannabis business pursuant to the California Cannabis Laws that is not an Authorized License.

(c) "Adult-Use Cannabis" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or over in California pursuant to the California Cannabis Laws.

(d) "Agreement" means this Development Agreement, inclusive of all Exhibits attached hereto.

(e) "Application" means the application for a development agreement submitted by

Developer to the City.

(f) "Assignment and Assumption Agreement" has the meaning set forth in Section 10.1.

(g) "AUMA" means the Adult Use of Marijuana Act (Proposition 64) approved by California voters on November 8, 2016.

(h) "Authorized License" has the meaning set forth in Section 2.3.

(i) "Bureau" means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

(j) "California Building Standards Codes" means the California Building Code, as amended from time to time, in Part 2, Volumes 1 and 2, as part of Title 24 of the California Code of Regulations, as may be adopted by the Mendota Municipal Code.

(k) "California Cannabis Laws" includes AUMA, MAUCRSA, CUA, the Medical Marijuana Program Act of 2004 codified as Health and Safety Code sections 11362.7 through 11.62.83, and any other applicable state laws that may be enacted or approved.

(l) "Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code. Cannabis and the term "marijuana" may be used interchangeably.

(m) "Cannabis Business" means a cannabis business operating pursuant to an Authorized License.

(n) "Cannabis Product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

(o) "CEQA" means the California Environmental Quality Act, as set forth in Division 13 (Commencing with Section 21000) of the California Public Resources Code, and the CEQA Guidelines as set forth in Title 14 (Commencing with Section 15000) of the California Code of Regulations.

(p) "City" means the City of Mendota, a municipal corporation having general police

powers.

(q) "City Council" means the City of Mendota City Council.

(r) "City Manager" means the City Manager of the City of Mendota, or his or her designee.

(s) "Charged Party" has the meaning set forth in Section 8.1.

(t) "Charging Party" has the meaning set forth in Section 8.1.

(u) "Commercial Cannabis Activity" means to cultivate, manufacture, distribute, or test a cannabis product provided for by Division 10 (commencing with Section 26000) of the Business and Professions Code.

(v) "Conditional Use Permit" means a conditional use permit for the Project issued by the City pursuant to Mendota Municipal Code Chapter 17.08.050.

(w) "Contribution Payment" has the meaning set forth in Section 4.2.

(x) "CUA" means the Compassionate Use Act (Proposition 215) approved by California voters on November 5, 1996.

(y) "Developer" means Odyssey Agricultural Development LLC and its assignees or successors as allowed herein. Developer also has the meaning set forth in Section 6.1.

(z) "Developed Portions of the Property" means the designated structure or structures and land specified in the development agreement application that is owned, leased, or otherwise held under the control of Developer, OAH, and/or VA.

(aa) "Development Agreement Statute" has the meaning set forth in Recital H.

(bb) "Exhibits" has the meaning set forth in Section 1.3.

(cc) "Gross Receipts" shall mean total revenue received or receivable by the Developer, OAH, and/or VA from any Commercial Cannabis Activity on the Property or from operation of the Project on the Property, including: all sales; the total amount of compensation received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares, or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, however designated. Included in "Gross Receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

(1) Cash discounts allowed and taken on Commercial Cannabis Activity sale;

(2) Any tax required by law to be included in or added to the purchase price of Commercial Cannabis Activity and collected from the consumer or purchaser;

(3) Such part of the sale price of property returned by purchasers in any Commercial Cannabis Activity upon rescission of a contract of sale as is refunded either in cash or by credit; and

(4) Receipts of refundable deposits in any Commercial Cannabis Activity, except that such deposits when forfeited and taken into income of the business shall not be excluded.

The intent of this definition is to ensure that in calculating the payments required under Section 17.99.070(A) of the Mendota Municipal Code, all sales related to Commercial Cannabis Activity or any other cannabis and cannabis products at the Property or through the Project are captured. This definition shall therefore be given the broadest possible interpretation consistent with this intent.

(dd) "Indoor Cultivation" means a Type 1A, Type 2A, Type 3A, and Type 5A license classifications, as set forth in Business and Professions code sections 26061(a)(2), 26061(a)(6), 26061(a)(9), and 26061(b)(2).

(ee) "Major Amendment" means an amendment that shall have a material effect on the terms of the Agreement. Major Amendments shall require approval by the City Council.

(ff) "Marijuana" has the same meaning as cannabis and those terms may be used interchangeably.

(gg) "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 *et seq*.

(hh) "MCRSA" has the meaning set forth in Recital A.

(ii) "Ministerial Fee" or "Ministerial Fees" have the meanings set forth in Section 4.1.

(jj) "Minor Amendment" means a clerical amendment to the Agreement that shall not materially affect the terms of the Agreement (e.g., change of notice address) and any amendment described as minor herein.

(kk) "Mixed-Light Cultivation" means a Type 1B, Type 2B, Type 3B, and Type 5B license classifications, as set forth in Business and Professions code sections 26061(a)(3), 26061(a)(7), 26061(a)(10), and 26061(b)(3).

(ll) "Mortgage" has the meaning set forth in Article 7.

(mm) "Non-Performance Late Fee" has the meaning set forth in Section 4.3.

(nn) "Notice of Non-Performance Late Fee" has the meaning set forth in Section 4.3.

(oo) "Notice of Termination" has the meaning set forth in Section 9.1.

(pp) "Processing Costs" has the meaning set forth in Section 1.11.

(qq) "Project" has the meaning set forth in Recital G.

(rr) "Project Litigation" has the meaning set forth in Section 10.6.

(ss) "Public Benefit Fee" has the meaning set forth in Section 4.2.

(tt) "Outdoor Cultivation" means Type 1, Type 2, Type 3, and Type 5 license classifications, as set forth in Business and Professions code sections 26061(a)(1), 26061 (a)(5), 26061 (a)(8), and 26061(b)(1)

(uu) "Site" has the meaning set forth in Recital D.

(vv) "State Cannabis Manufacturing Regulations" means the regulations related to cannabis manufacturing issued by a State Licensing Authority in accordance with Chapter 13 (commencing with Section 26130) of Division 10 of the Business and Professions Code, which may be amended from time to time.

(ww) "State Licensing Authority" means the state agency responsible for the issuance, renewal, or reinstatement of a state cannabis license, or the state agency authorized to take disciplinary action against a business licensed under the California Cannabis Laws.

(xx) "State Taxing Authority" has the meaning set forth in Section 4.2.

(yy) "Subsequent City Approvals" has the meaning set forth in Section 3.1.

(zz) "Term" has the meaning described in Section 1.7.

Section 1.5. Project is a Private Undertaking. The Parties agree that the Project is a private development and that City has no interest therein, except as authorized in the exercise of its governmental functions. City shall not for any purpose be considered an agent, partner, or joint venturer of Developer, OAH, VA , or the Project.

Section 1.6. Effective Date of Agreement. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective and title to the Site is vested in the Developer (the "Effective Date").

Section 1.7. Term. The "Term" of this Agreement is twenty (20) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

(a) Government Tolling or Termination. City may provide written notice to Developer, OAH, and/or VA to cease all Commercial Cannabis Activity, upon which Developer, OAH, and/or VA shall immediately comply, only if City is specifically required to comply with

federal or state law and such federal or state law requires cessation of Cannabis Cultivation Activities. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for an equivalent period of time (the "Tolling Period"). Developer, OAH, and/or VA shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer, OAH, and/or VA shall resume paying any applicable fees after the Tolling Period ends. City and Developer, OAH, and/or VA shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds one (1) calendar year.

(b) **Developer/OAH/VA Tolling or Termination.** Developer, OAH, and/or VA shall not temporarily halt or suspend this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement.

(c) **Developer/OAH/VA Termination.** Developer, OAH, and/or VA may provide written notice to City of intent to cease all Commercial Cannabis Activity, if Developer, OAH, and/or VA are required, directed, or believes, in their sole and absolute discretion, they must temporarily halt or terminate Commercial Cannabis Activity. In such an event, Developer's, OAH's, and/or VA's obligations under this Agreement shall terminate. Any resumption of Commercial Cannabis Activity shall be subject to approval by the City Manager.

Section 1.8. Priority of Enactment. In the event of conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (a) General Plan, (b) Agreement, (c) Conditional Use Permit, and (d) Subsequent City Approvals, as defined in Section 3.1 of this Agreement.

Section 1.9. Amendment of Agreement. This Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council hereby expressly authorizes the City Manager to approve a Minor Amendment to this Agreement, upon notification of the City Council. A Major Amendment to this Agreement shall be approved by the City Council. The City Manager shall, on behalf of City, have sole discretion for City to determine if an amendment is a Minor Amendment or a Major Amendment. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

Section 1.10. Recordation of Development Agreement. The City Clerk shall cause a copy of this Agreement to be recorded against the title of the Site within ten (10) business days of the Effective Date.

Section 1.11. Funding Agreement for Processing Costs. Developer has deposited fifteen thousand dollars ($15,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation, processing and annual review of this Agreement, including recording fees, publishing fees, staff time, consultant and attorney fees and costs (collectively, "Processing Costs"). The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

(a) **Apportionment of Processing Costs.** If the amount deposited for purposes of Processing Costs is insufficient to cover all Processing Costs, City shall provide notice to Developer, OAH, and/or VA and Developer, OAH, and/or VA shall deposit with City such additional funds necessary to pay for all Processing Costs within thirty (30) calendar days. The failure to timely pay any such additional amounts requested by City shall be considered a material default of this Agreement and City may immediately terminate this Agreement and all entitlements associated with the project.

(b) **Accounting.** Developer may request, and City shall issue within two (2) weeks, an accounting and written acknowledgement of Processing Costs paid to City.

ARTICLE 2
DEVELOPMENT OF PROPERTY

Section 2.1. Vested Right of Developer/OAH/VA. During the Term, in developing the Site consistent with the Project described herein, Developer, OAH, and VA are assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested in Developer, OAH, and VA and may not be modified or terminated by City except as set forth in this Agreement or with Developer, OAH, and/or VA written consent.

Section 2.2. Vested Right to Develop. In accordance with Section 2.1, Developer, OAH, and/or VA shall have the vested right to develop and use the Project consistent with this Agreement, the existing City regulations and codes, the Conditional Use Permit, and Subsequent City Approvals. Developer, OAH, and VA hereby acknowledge and agree that a condition of approval for the Conditional Use Permit will be that this Agreement remain in full force and effect for the duration of the Term and that any assignment or transfer of Developer's, OAH's, and/or VA's interests under this Agreement may be made only with the City's consent in accordance with Section 10.1 herein.

Section 2.3. Permitted Uses and Development Standards. Developer, OAH, and/or VA shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license types (the "Authorized License"):

License Description	State License Type(s)
Cultivation Indoor	1A/2A/3A/5A
Mixed Light Cultivation	1B/2B/3B/5B
Outdoor Cultivation	1/2/3/5
Cultivation Nursery	4
Manufacturing 1	6
Manufacturing 2	7
Laboratory Testing	8
Distribution	11
Transportation	12
Cultivation Processor	C-P

Developer, OAH, and/or VA or their tenants or assignees shall be permitted to use the Site consistent

with the Authorized License for the Term of this Agreement and during the time Developer, OAH, and/or VA, or their tenants or assignees, are applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer, OAH, and/or VA, or their tenants or assignees, are required to apply for and obtain the Authorized License from the State of California. If the State Licensing Authority does not grant the Authorized License to Developer, OAH, and/or VA, or their tenants or assignees, Developer, OAH, and/or VA, or their tenants or assignees, shall immediately cease Commercial Cannabis Activity on the Site. Developer and/or OAH, or their tenants or assignees, shall also, within ten (10) calendar days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority's denial or rejection of any license. If the Authorized License is not granted by the State of California, Developer, OAH, and/or VA, or their tenants or assignees, shall immediately cease operations. In this situation, this Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

Section 2.4. Major Amendment to Permitted Uses. Developer, OAH, and/or VA may request to add one or more of the license types then authorized by the California Cannabis Laws to the Authorized License. If City Council allows any Additional Licenses, City Council shall make a finding of whether Developer's, OAH's, and/or VA's, or their tenants' or assignees', Additional Authorized Licenses will have any additional impact on City neighborhoods, infrastructure, or services. Developer, OAH, and/or VA shall be required to compensate City for all additional impacts on City infrastructure or services associated with any Additional Licenses and the Public Benefit Fee amount shall be revised accordingly. This process shall be a Major Amendment to this Agreement.

Section 2.5. Development Permit. By entering into this Agreement, City understands and acknowledges that prior to Developer, OAH, and/or VA commencing any development or construction activities on the Site, or the operation of any Commercial Cannabis Activity on the Site, Developer, OAH, and/or VA are required to obtain from the City a Conditional Use Permit and any applicable Subsequent City Approvals. Developer, OAH, and/or VA shall be required to comply with all provisions of the Mendota Municipal Code and any other City rules and administrative guidelines associated with implementation of the Commercial Cannabis Overlay District. Nothing in this Agreement shall be construed as limiting the ability of City to amend the Mendota Municipal Code or issue rules or administrative guidelines associated with implementation of the Commercial Cannabis Overlay District or Developer's, OAH's, and VA's obligation to strictly comply with the same.

Section 2.6. Subsequent Entitlements, Approvals, and Permits. Successful implementation of the Project shall require Developer, OAH, and/or VA to obtain additional approvals and permits from City and other local and state agencies. City shall comply with CEQA in the administration of all Subsequent City Approvals. In acting upon any Subsequent City Approvals, City's exercise of discretion and permit authority shall conform to this Agreement. Notwithstanding the foregoing, in the course of taking action on the Subsequent City Approvals, City will exercise discretion in adopting mitigation measures as part of the Conditional Use Permit. Any entitlements and/or development standards required by the City that are not contemplated in the Conditional Use Permit shall, to the extent practicable, be consistent with the County of Fresno's development standards for "Exclusive Agricultural" uses as set forth in the Fresno County Ordinance Code - Division 6, Zoning Ordinance. The exercise of this discretion is not prohibited by this Agreement, but the exercise of

that discretion must be reasonable and consistent with this Agreement. Nothing in this Agreement shall preclude the evaluation of impacts or consideration of mitigation measures or alternatives, as required by CEQA.

Section 2.7. No Commitment to Project Approval. Developer, OAH, and VA understand and acknowledge that City shall be under no obligation whatsoever to approve or to issue to Developer, OAH, or VA any development entitlement, including, but not limited to, a Conditional Use Permit or any applicable Subsequent City Approvals, related to Developer's, OAH's, and/or VA's development or construction activities on the Site, or the operation of any Commercial Cannabis Activity on the Site. City will conduct environmental review of the relevant activity or activities in accordance with the requirements of CEQA prior to granting any approval associated with the Development Entitlements. Developer, OAH, and VA acknowledge and agree that, in accordance with Seller's obligations under CEQA, City may, after conducting appropriate environmental review, decide not to approve some or all of the required development entitlements, or may approve some or all of the development entitlements subject to conditions. The Parties expressly intend that nothing in this Agreement shall be interpreted as a commitment by City to grant any development entitlements to Developer, OAH, or VA prior to City's completion of appropriate environmental review in accordance with CEQA, or as an abrogation of the City's obligation to exercise its independent judgement in deciding whether to grant any development entitlement or whether to impose conditions on any development entitlement.

Section 2.8. Initiatives and Referenda. If any City ordinance, rule, or regulation, or addition to the Mendota Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, an associated Conditional Use Permit, Subsequent City Approvals, or reduce the development rights or assurances provided to Developer, OAH, and VA in this Agreement, such Mendota Municipal Code changes shall not be applied to the Site or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer, OAH, and/or VA and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

Section 2.9. Regulation by Other Government Entities. Developer, OAH, and VA acknowledge that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may negatively affect the Project or the ability of City to issue a permit to Developer, OAH, and VA or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

Section 2.10. Developer's Right to Rebuild. Developer, OAH, and/or VA may renovate portions of the Site or the OAH Parcel any time within the Term of this Agreement consistent with the Mendota Municipal Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Project by this Agreement.

Section 2.11. Changes in California Building Standards Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring

from time to time to the California Building Standards Codes.

Section 2.12. Changes Mandated by Federal or State Law. The Site and Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Mendota Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Commercial Cannabis Overlay District. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City, Developer, OAH, and/or VA shall provide the other Parties with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Mendota Municipal Code or this Agreement. Promptly thereafter, City, Developer, OAH, and/or VA shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City, Developer, OAH, and/or VA will attempt to preserve the terms of this Agreement and the rights of Developer, OAH, and VA derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer, OAH, and/or VA for doing so or be considered in breach or default of this Agreement. City also agrees to process, in accordance with the provisions of this Agreement, Developer's, OAH's, or VA's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

Section 2.13. Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency so as to not have a material adverse impact on the Project, to select that option for addressing the situation which, in City's discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City.

ARTICLE 3
ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

Section 3.1. Subsequent City Approvals. City has the authority to permit the development, construction, and conditionally permitted use contemplated in this Agreement. City agrees to timely review, pursuant to the terms of this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and applicable law, any Subsequent City Approvals reasonably necessary to complete the goals, objectives, policies, standards, and plans described in this Agreement. Subsequent City Approvals include any applications, permits, and approvals required to complete the improvements necessary to develop the Site, in general accordance with this Agreement ("Subsequent City Approvals"). Nothing herein shall require City to provide Developer, OAH,

and/or VA with Subsequent City Approvals prior to, or without complying with, all of the requirements in this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and any applicable law.

Section 3.2. Timely Processing. City shall use its reasonable best efforts to process, within a reasonable time, any Subsequent City Approvals or environmental review requested by Developer during the Term of this Agreement.

Section 3.3. Cooperation between City and Developer/OAH/VA. Consistent with the terms set forth herein, City agrees to cooperate with Developer, OAH, and/or VA, on a timely basis, in securing all permits or licenses that may be required by City or any other government entity with permitting or licensing jurisdiction over the Project.

Section 3.4. Further Consistent Discretionary Actions. The exercise of City's authority and independent judgment is recognized under this Agreement, and nothing in this Agreement shall be interpreted as limiting City's discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be consistent with the terms of this Agreement and not prevent, hinder, or compromise development or use of the Site as contemplated by the Parties in this Agreement.

ARTICLE 4
PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

Section 4.1. Processing Fees and Charges. Developer, OAH, and/or VA shall pay to City those processing, inspection, plan checking, and monitoring fees and charges required by City which are in force and effect at the time those fees and charges are incurred (including any post-Effective Date increases in such fees and charges) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a "Ministerial Fee" and collectively, the "Ministerial Fees").

Section 4.2. Public Benefit.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer, OAH, and VA that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that is commensurate with the private benefits conferred on Developer, OAH, and VA (the "Public Benefit Fee"). Developer, OAH, and VA acknowledge that the Public Benefit Fees provided for herein are greater than the annual fee provided for in Mendota Municipal Code section 17.99.070 and, despite this fact, voluntarily agree to pay the fees contemplated herein, acknowledging that the private benefits conferred are of equal or greater consideration to the fees, and waives any right to challenge said fees as a violation of any law. In consideration of the foregoing, Developer, OAH, and/or VA shall remit to City:

(1) A one-time Public Contribution Payment in the amount of ONE HUNDRED AND TWENTY THOUSAND DOLLARS ($120,000) (the "Contribution Payment") within thirty (30) days of Developer, OAH, and/or VA closing escrow on that certain Purchase and Sale Agreement and Joint Escrow Instructions entered into by and between Developer, OAH, VA, and City on or

about October 22, 2019, and thereby, Developer, OAH, and/or VA obtaining fee title interest to the Property. City acknowledges that Developer's, OAH's, and/or VA's obligation to remit the Contribution Payment to the City, or any portion thereof, is strictly conditioned on (a) the Agreement having obtained final City approval, (b) Developer having obtained the Conditional Use Permit as discussed in Section 2.5 above, (c) Developer having obtained any and all "Subsequent Entitlements, Approvals, and Permits" as discussed in Section 2.6 above, and (d) Developer having obtained any and all "Subsequent City Approvals" as discussed in Section 3.1 above.

(2) As described in Section 17.99.070 of the Mendota Municipal Code, an annual "Public Benefit Fee" in the greatest amount of the following, as applicable:

(i) FIVE DOLLARS ($5.00) per square foot for so long as the Developed Portions of the Property are less than two hundred thousand (200,000) square feet; or

(ii) FOUR DOLLARS ($4.00) per square foot for so long as the Developed Portions of the Property are between two hundred thousand (200,000) square feet and four hundred ninety-nine, nine hundred ninety-nine thousand (499,999) square feet; or

(iii) For so long as the Developed Portions of the Property are five hundred thousand (500,000) square feet or greater, the greater amount of the following:

(a) SIX HUNDRED THOUSAND DOLLARS ($600,000); or

(b) Four percent (4%) of the Project's annual Gross Receipts, as defined in Section 1.4.

To the extent that Section 4.2(a)(2) is applicable for the calculation of the Public Benefit Fee, said fee will be adjusted pursuant to the Consumer Price Index for the Fresno/Clovis metropolitan area (All Urban Consumers) published by the United Stated Department of Labor, Bureau of Labor and Statistics ("Index"). The adjustment shall be made based on the first Index published in the year for which the Public Benefit Fee is paid and shall be subject to a maximum increase of 2% in any given year.

(3) The annual Public Benefit Fee described in Section 4.2, above, shall be paid in quarterly installments on the first (1st) business day of every third (3rd) month ("Quarterly Payment").

(b) Developer, OAH, and/or VA shall remit the Contribution Payment and the Public Benefit Fee as applicable, to City as described in subdivisions (a.1), (a.2), and (a.3) of this Section. Failure to remit the Contribution Payment and Public Benefit Fee, as applicable, is a material breach of this Agreement and shall be sufficient grounds for revocation of all entitlements associated with the Project. For purposes of clarity and avoidance of doubt, the Parties agree and acknowledge that Developer's, OAH's, and/or VA's obligation to commence making the Public Benefit Fee payment to the City shall commence on the first day of Project operation when the first crop is planted and not prior to that date.

Section 4.3. Reporting. Developer, OAH, and/or VA shall provide City with copies of any reports

provided to a State Licensing Authority or a State Taxing Authority within forty-five (45) calendar days of that submission. Failure or refusal of Developer, OAH, and/or VA to (a) provide any such report to City, State Licensing Authority, or the State Taxing Authority within the time required by that entity, or (b) pay the Public Benefit Amount or amount due to a State Licensing Authority or State Taxing Authority when the same are due and payable, shall constitute full and sufficient grounds for the revocation or suspension of the Conditional Use Permit and all entitlements associated with the Project.

Section 4.4. Records. Subsequent tenants or assignees shall keep records of all Commercial Cannabis Activity in accordance with Chapter 16 (commencing with Section 26160) of Division 10 of the Business and Professions Code and the State Retail Cannabis Regulations. All records required by this Article 4 shall be maintained and made available for City's examination and duplication (physical or electronic) at the Site or at an alternate facility as approved in writing by the City Manager or his or her designee. Upon request, Developer, OAH, and/or VA shall make all records relating to this Article 4 available to City within three (3) calendar days.

Section 4.5. Late Fee. Developer, OAH, and VA acknowledge that, to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Liquidated damages and interest provisions are necessary to assist City in compliance review and enforcement actions. If Developer, OAH, or VA fail to make any payment when due as required by this Agreement, including the Public Benefit Amount, City may impose a "Non-Performance Late Fee." A Non-Performance Late Fee of one percent (1%) shall be applied to all past due payments. City shall deliver to Developer, OAH, and/or VA a "Notice of Non-Performance Late Fee," attached hereto as **Exhibit C**. Payment of the Non-Performance Late Fee shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee. The Parties hereto acknowledge and agree that the sums payable under this Section 4.5 shall constitute liquidated damages and not penalties and are in addition to all other rights of the City, including the right to call a default. The Parties further acknowledge that (i) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (ii) the amounts specified herein bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with any failure by Developer, OAH, or VA to remit payment as required by this Agreement, (iii) one of the reasons for the Parties' agreement as to such amounts was the uncertainty and cost of litigation regarding the question of actual damages, and (iv) the Parties are sophisticated business parties and have been represented by sophisticated and able legal counsel and negotiated this Agreement at arm's length.

Section 4.6. Interest on Unpaid Non-Performance Late Fee. If Developer, OAH, and/or VA fail to pay the Non-Performance Late Fee after City has delivered the Notice of Non-Performance Late Fee, then, in addition to the principal amount of the Non-Performance Late Fee, Developer, OAH, and/or VA shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Late Fee, from a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee.

Section 4.7. Exempt from City Tax. For the Term of this Agreement, Developer, OAH, and VA shall be exempt from any City tax on commercial cannabis businesses. Notwithstanding the

foregoing, Developer, OAH, and/or VA and Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Fresno, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement). In the event that the City applies a new tax on commercial cannabis businesses during the term of this Agreement, the City shall refund or credit the amount owed by Developer, OAH, and/or VA pursuant to the Public Benefit Fee by an equal amount to any new tax on commercial cannabis businesses.

Section 4.8. Employing City Residents. Developer, OAH, and/or VA agree to use their best efforts to promote the hiring and employment of local City residents to construct, if necessary, and operate the business(es) within the Project. As part of such efforts, Developer, OAH, and/or VA agree to include in any lease, license, or other conveyance of any right to use the Project such language that any transferee of such interest shall use its best efforts to hire and employ local City residents for its business.

Section 4.9. Contracting with Local Businesses. Developer, OAH, and VA agree to use their best efforts to promote the contracting of local businesses to construct, if necessary, and operate the business(es) within the Project. As part of such efforts, Developer, OAH, and/or VA agree to include in any lease, license or other conveyance of any right to use the Project such language that any transferee of such interest shall use its best efforts to contract with local City businesses for its business.

Section 4.10. Manner of Payment. All payments required to be made to City pursuant to this Agreement shall be paid by Developer, OAH, and/or VA via check, ACH payment, or wire transfer through a bank licensed and in good standing with all appropriate regulatory bodies. No payment required pursuant to this Agreement may be made in cash. Developer, OAH, and VA understand and agree that any failure to comply with this Section 4.10 shall constitute a material breach of this Agreement.

Section 4.11. Development Incentive. To provide an incentive for Developer's development of the Property and construction of the Project, and to facilitate Developer's prompt performance of its obligations under this Agreement in a manner that will maximize the financial benefit to City over the Term of this Agreement, City shall, within the first year of the Project's operation, recognize a $25,000 credit in Developer's favor to be applied to any liability of Developer to the City. The liability or liabilities to which the credit is applied shall be determined by the City Manager in consultation with Developer.

ARTICLE 5
PUBLIC FACILITIES, SERVICES, AND UTILITIES

Section 5.1. City Use of Public Benefit Fee. City shall use the Public Benefit Amount to pay for the impact on and maintenance or improvement of City neighborhoods, for the general welfare of the residents of Mendota, and the existing level of service of City infrastructure and services to accommodate for the Project.

ARTICLE 6
INSURANCE AND INDEMNITY

Section 6.1. Insurance. Developer, OAH, and/or VA shall require all persons doing work on the Project, including their contractors and subcontractors (collectively, "Developer" for purposes of this Article 6 only), to obtain and maintain insurance of the types and in the amounts described in this Article with carriers reasonably satisfactory to City.

(a) General Liability Insurance. Developer, OAH, and/or VA shall maintain commercial general liability insurance or equivalent form with a limit of not less than One Million Dollars ($1,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars ($2,000,000) each occurrence. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as "Additional Insureds" by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insured.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(b) Automotive Liability Insurance. Developer, OAH, and/or VA shall maintain business automobile liability insurance or equivalent form with a limit of not less than One Million Dollars ($1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as Additional Insureds by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed Additional Insureds.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(c) Workers' Compensation Insurance. Developer, OAH, and/or VA shall take out and maintain during the Term of this Agreement, workers' compensation insurance for all of Developer's, OAH's, and/or VA's employees employed at or on the Project, and in the case any of the work is subcontracted, Developer, OAH, and/or VA shall require any general contractor or subcontractor similarly to provide workers' compensation insurance for such contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Developer, OAH, and/or VA . In case any class of employee engaged in work on the Project is not protected under any workers' compensation law, Developer, OAH, and/or VA shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of

employees not otherwise protected. Developer, OAH, and VA hereby indemnify City for any damage resulting from failure of Developer, OAH, and/or VA, their agents, employees, contractors, or subcontractors to take out or maintain such insurance. Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars ($1,000,000) for each accident shall be maintained.

Section 6.2. Other Insurance Requirements. Developer, OAH, and VA shall do all of the following:

(a) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidence all insurance required in this Article, including evidence that such insurance will not be canceled, allowed to expire, or be materially reduced in coverage without thirty (30) days prior written notice to City.

(b) Provide to City, upon request, and within seven (7) calendar days of said request, certified copies of endorsements and policies, and properly executed certificates of insurance evidencing the insurance required herein.

(c) Replace or require the replacement of certificates, policies, and endorsements for any insurance required herein expiring prior the termination of this Agreement.

(d) Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the Term or the mutual written termination of this Agreement.

(e) Place all insurance required herein with insurers licensed to do business in California with a current Best's Key Rating Guide reasonably acceptable to City.

Section 6.3. Indemnity. To the fullest extent permitted by law, Developer, OAH, and/or VA shall defend, indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, consultants, and volunteers (collectively, "City's Agents") from any and all liability arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Project, this Agreement, any applicable Conditional Use Permit, or Subsequent City Approvals.

Upon receiving notice of a claim, action, or proceeding, Developer, OAH, and/or VA shall assume the defense of the claim, action, or proceeding through the prompt payment of all attorneys' fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City's counsel in defending such an action. City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, selecting counsel to defend City and settlement or other disposition of the matter. The City's remedies are limited to that portion of the Project that is in breach of this Section 6.3.

Section 6.4. Failure to Indemnify; Waiver. Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of any applicable Conditional Use Permit and Subsequent City Approvals, which shall entitle City to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify City shall constitute grounds upon which City may rescind its approval of any applicable Conditional Use Permit or entitlements associated with the Project. Developer's, OAH's, and/or VA's failure to

indemnify City shall be a waiver by Developer, OAH, and/or VA of any right to proceed with the Project, or any portion thereof, and a waiver of Developer's, OAH's, and/or VA's right to file a claim, action, or proceeding against City or City's Agents based on City's rescission or revocation of any Conditional Use Permit, Subsequent City Approvals, or City's failure to defend any claim, action, or proceeding based on Developer's, OAH's, and/or VA's failure to indemnify City.

Section 6.5. Waiver of Damages. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer, OAH, and/or VA and, therefore, Developer, OAH, and VA hereby waive all claims for damages against City for breach of this Agreement. Developer, OAH, and VA further acknowledge that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer, OAH, and VA therefore waive all claims for damages against City in the event that this Agreement or any Project approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer, OAH, and/or VA are opposed. Developer, OAH, and VA further acknowledge that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer, OAH, and VA waive all claims for damages against City in this regard.

ARTICLE 7
MORTGAGEE PROTECTION

Section 7.1. Supremacy Over Liens. This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Site or any portion thereof following recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall be deemed in default and terminate as to an interest in the Site or Project upon the foreclosure or transfer of that interest, whether by operation of law or any other method of interest change or transfer, unless the City Manager has authorized such change or transfer in advance, in writing, which such authorization shall not be unreasonably withheld or conditioned.

ARTICLE 8
DEFAULT

Section 8.1. General Provisions.

(a) Subject only to any extensions of time by mutual consent in writing, or as otherwise provided herein, the failure or delay by any Party to perform in accordance with the terms and provisions of this Agreement shall constitute a default. Any Party alleging a default or breach of this Agreement ("Charging Party") shall give the other Party ("Charged Party") not less than thirty (30) calendar days' written notice, which shall specify the nature of the alleged default and the manner in which the default may be cured. During any such thirty (30) calendar day period, the Charged Party shall not be considered in default for purposes of termination of this Agreement or institution of legal

proceedings for the breach of this Agreement.

(b) After expiration of the thirty (30) calendar day period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within thirty (30) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit or other entitlement related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 or the comparable provisions of the Mendota Municipal Code within thirty (30) calendar days from the expiration of the thirty (30) day notice period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional five (5) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party may give written notice of termination of this Agreement, specifying in the notice the alleged nature of the default and potential actions to cure said default where appropriate. If the alleged default is not cured in thirty (30) calendar days or within such longer period specified in the notice or the defaulting Party is not diligently pursuing a cure or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice.

(f) In the event Developer, OAH, and/or VA are in default under the terms and conditions of this Agreement, no permit application shall be accepted by City nor will any permit be issued to Developer, OAH, and/or VA until the default is cured, or the Agreement is terminated.

(g) In the event that a person or entity other than the Developer, OAH, and/or VA are in default, Developer, OAH, and/or VA shall use commercially reasonable efforts to bring the person or entity in default into compliance. The City shall provide the Developer, OAH, and/or VA with notice and opportunity to cure as provided for in paragraph (a) through (e) above, except that the time periods in paragraphs (a), (b), (c), and (e) shall be ninety (90) days.

Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer, OAH, and/or VA and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section

65865.1. City shall deposit in the mail or fax to Developer, OAH, and/or VA a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) calendar days prior to such periodic review. Developer, OAH, and/or VA shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer, OAH, and/or VA shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable.

Section 8.3. Estoppel Certificates. City shall, with at least twenty (20) calendar days' prior written notice, execute, acknowledge, and deliver to Developer, OAH, VA, Developer's, and/or OAH's lender, potential investors, or assignees an Estoppel Certificate in writing which certifies that this Agreement is in full force and effect, that there are no breaches or defaults under the Agreement, and that the Agreement has not been modified or terminated and is enforceable in accordance with its terms and conditions.

(a) At Developer's, OAH's, and/or VA's option, City's failure to deliver such Estoppel Certificate within the stated time period shall be conclusive evidence that the Agreement is in full force and effect, that there are no uncured breaches or defaults in Developer's, OAH's, and/or VA's performance of the Agreement or violation of any City ordinances, regulations, and policies regulating the use and development of the Site or the Project subject to this Agreement.

Section 8.4. Default by City. In the event City does not accept, review, approve, or issue any permits or approvals in a timely fashion, as defined by this Agreement, or if City otherwise defaults under the terms of this Agreement, City agrees that Developer, OAH, and/or VA shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer, OAH, and/or VA.

Section 8.5. Cumulative Remedies of Parties. In addition to any other rights or remedies, City, Developer, OAH, and/or VA may institute legal or equitable proceedings to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to Section 8.1(c) of this Agreement.

Section 8.6. Enforced Delay, Extension of Times of Performance. Delays in performance, by either Party, shall not be deemed a default if such delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed where mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations enacted by the state or federal government, litigation, or other force majeure events. An extension of time for such cause shall be in effect for the period of forced delay or longer, as may be mutually agreed upon.

ARTICLE 9 TERMINATION

Section 9.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice of such termination in substantial conformance with the "Notice of Termination" attached hereto as **Exhibit D**, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 9.2. Effect of Termination on Developer/OAH/VA Obligations. Termination of this Agreement shall eliminate any further obligation of Developer, OAH, and/or VA to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Developer, OAH, and/or VA to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.3. Effect of Termination on City's Obligations. Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.4. Survival After Termination. The rights and obligations of the Parties set forth in this Section 9.4, Section 2.9, Section 6.3, Section 10.3, Section 10.4, Section 10.5, Section 10.7, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

ARTICLE 10
OTHER GENERAL PROVISIONS

Section 10.1. Assignment and Assumption. The rights granted to Developer, OAH, and/or VA under this Agreement are personal to Developer, OAH, and/or VA and Developer, OAH, and VA shall not have the right to sell, assign, or transfer all or any part of its rights, title, and interests in all or a portion of Site, or Project, subject to or a part of this Agreement, to any person, firm, corporation, or entity during the Term of this Agreement without the advance written consent of the City Manager.

(a) The City Manager's consent shall not be unreasonably withheld or conditioned; however, Developer, OAH, and VA hereby acknowledge and agree that in no event shall it be unreasonable for the City Manager to withhold or condition consent if the proposed assignee or transferee cannot:

(i) Demonstrate financial resources in the form of a financial statement, balance sheet, or tax returns that attest to the assignee or transferee's financial health and ability to finance and operate the proposed business for a minimum of twelve (12) months; and

(ii) Demonstrate technical expertise through utilization of a substantial portion of the Project's existing management team or through a detailed description of the transferee's experience in operating the same or similar type of project.

(b) Upon City's receipt of written notice that Developer, OAH, and/or VA propose to assign or transfer any of its rights or interests under this Agreement, the City Manager shall, within thirty (30) days of receiving all requested information regarding the proposal from Developer, OAH, and/or VA, notify Developer, OAH, and/or VA in writing whether the City intends to withhold or condition its consent pursuant to this Section 10.1 and the reasons therefor.

(c) If the City Manager notifies Developer, OAH, and/or VA that the City intends to withhold consent pursuant to this Section 10.1, the Parties shall meet and confer in good faith to determine whether, in lieu of withholding consent, the City's concerns can be adequately addressed by imposing appropriate conditions on the City's consent.

(d) If the Parties are unable to reach agreement regarding the proposed assignment or transfer, Developer, OAH, and/or VA may, within ten (10) days after meeting and conferring pursuant to subdivision (c) above, appeal the City Manager's decision to the City Council. In such event, the City Council shall finally determine, in its sole and absolute discretion, whether the withholding or conditioning of consent to the proposed assignment or transfer is reasonable.

(e) Any assignment or transfer in violation of this Section 10.1 will be automatically void and will be considered an immediate, material breach of this Agreement such that City may elect to immediately terminate this Agreement. If the City Manager approves an assignment or transfer of any interest detailed in this Section 10.1, City, Developer, OAH, and VA shall execute an "Assignment and Assumption Agreement" in the form attached hereto as **Exhibit E**. Nothing in this Section 10.1 applies to Developer's, OAH's, and/or VA's capitalization or ownership provisions.

Section 10.2. Covenants Running with the Land. For so long as this Agreement is in full force and effect, all of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of interest in the Site or Project, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including California Civil Code section1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Site, and is binding upon Developer, OAH, and VA .

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer, OAH, and/or VA must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which

such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:	City of Mendota 643 Quince Street Mendota, CA 93640 Attention: Cristian Gonzalez, City Manager
And to:	Wanger Jones Helsley PC 265 E. River Park Circle, Suite 310 Fresno, California 93720 Attention: John P. Kinsey, Esq.
If to Developer:	Odyssey Agricultural Development LLC 2222 E. Olympic Blvd. Los Angeles, CA 90021 Attention: Legal Department
And to:	Weinberg Gonser LLP 10866 Wilshire Boulevard, Suite 1650 Los Angeles, CA 90024 Attention: Russell Greenman, Esq.
If to OAH:	Odyssey Agricultural Holdings LLC 2222 E. Olympic Blvd. Los Angeles, CA 90021 Attention: Legal Department
And to:	Weinberg Gonser LLP 10866 Wilshire Boulevard, Suite 1650 Los Angeles, CA 90024 Attention: Russell Greenman, Esq.
If to VA:	Valley Agricultural Holdings LLC 2151 E. Convention Center Way, Suite 222 Ontario, CA 91764 Attention: Richard Munkvold
And to:	Valley Agricultural Holdings, LLC 2151 E. Convention Center Way, Suite 114 Ontario, CA 91764 Attention: Steven B. Imhoof, Esq.

Section 10.4. Governing Law and Binding Arbitration. The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State

of California. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Fresno, California, before one arbitrator. The arbitration shall proceed pursuant to the Comprehensive Arbitration Rules and Proceedings of the Judicial Arbitration and Mediation Services. Judgment on the arbitration award may be entered in any court having jurisdiction thereof.

Section 10.5. Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any term or provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any term or provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, any provisions that are not invalid or unenforceable shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement. The Parties expressly agree that each Party is strictly prohibited from failing to perform any and all obligations under this Agreement on the basis that this Agreement is invalid, unenforceable, or illegal. By entering into this Agreement, each Party disclaims any right to tender an affirmative defense in any arbitration or court of competent jurisdiction, that performance under this Agreement is not required because the Agreement is invalid, unenforceable, or illegal.

Section 10.6. Cumulative Remedies. In addition to any other rights or remedies, City, Developer, OAH, and/or VA may institute legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of the provisions of this Agreement. The prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs. Notwithstanding the foregoing or any other provision of this Agreement, in the event of City default under this Agreement, Developer, OAH, and VA agree that Developer, OAH, and VA may not seek, and shall forever waive any right to, monetary damages against City, but excluding therefrom the right to recover any fees or charges paid by Developer, OAH, and/or VA in excess of those permitted hereunder.

Section 10.7. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer, OAH, and/or VA for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer, OAH, and/or VA will indemnify, hold City harmless from, and defend City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees, and expenses of litigation awarded to the prevailing party or parties in such litigation. Developer, OAH, and/or VA shall pay all litigation fees to City, within thirty (30) days of receiving a written request and accounting of such fees and expenses, from City. Notwithstanding the aforementioned, City may request, and Developer, OAH, and/or VA will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

Section 10.8. Constructive Notice and Acceptance. Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person

acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

Section 10.9. Statute of Limitations and Laches. City, Developer, OAH, and VA agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the California Government Code, which provides for a ninety (90) day statute of limitations to challenge the adoption of this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation, which is filed and served more than ninety (90) days after the execution of this Agreement, City, Developer, OAH, and VA shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses. This Section in no way limits the right of a Party, claiming that the other Party breached the terms of this Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

Section 10.10. Change in State Regulations. In no event shall Developer, OAH, or VA operate the Project in violation of the Agreement, or any applicable regulations issued pursuant to the California Cannabis Laws, as may be amended from time to time.

Section 10.11. Standard Terms and Conditions.

(a) Venue. Venue for all legal proceedings shall be in the Superior Court of California in and for the County of Fresno.

(b) Waiver. A waiver by any Party of any breach of any term, covenant, or condition herein contained or a waiver of any right or remedy of such Party available hereunder, at law or in equity, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained or of any continued or subsequent right to the same right or remedy. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

(c) Completeness of Instrument. This Agreement, together with its specific references, attachments, and Exhibits, constitutes all of the agreements, understandings, representations, conditions, warranties, and covenants made by and between the Parties hereto. Unless set forth herein, no Party to this Agreement shall be liable for any representations made, express or implied.

(d) Supersedes Prior Agreement. It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, written, electronic, or oral, between the Parties hereto with respect to the Site and the Project.

(e) Captions. The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

(f) Number and Gender. In this Agreement, the neutral gender includes the feminine and masculine, and the singular includes the plural, and the word "person" includes corporations,

partnerships, firms, or associations, wherever the context requires.

(g) Mandatory and Permissive. "Shall" and "will" and "agrees" are mandatory. "May" or "can" are permissive.

(h) Term Includes Extensions. All references to the Term of this Agreement shall include any extensions of such Term.

(i) Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(j) Other Documents. The Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and, to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

(k) Time is of the Essence. Time is of the essence in this Agreement in each covenant, term, and condition herein.

(l) Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, no Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

(m) Document Preparation. This Agreement will not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

(n) Advice of Legal Counsel. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

(o) Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

(p) Calculation of Time Periods. All time referenced in this Agreement shall be calendar days, unless the last day falls on a legal holiday, Saturday, or Sunday, in which case the last day shall be the next business day.

(q) Confidentiality. Both Parties agree to maintain the confidentiality of the other

Party's "Confidential Information" under this Agreement and shall not disclose such information to third parties. "Confidential Information" shall include, but not be limited to, business plans, trade secrets, and industry knowledge. Confidential Information shall not apply to information that: (i) is in the public domain at the time of disclosures or (ii) is required to be disclosed pursuant to a court order, governmental authority, or existing state law.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer, Odyssey, and City as of the Effective Date of the Agreement, as defined above.

"CITY"

Date: March 30, 2021

CITY OF MENDOTA,
a California Municipal Corporation

By: Cristian Gonzalez
Its: City Manager

Attest:

City Clerk

CITY OF MENDOTA INCORPORATED 1942 CALIFORNIA

Date: March 6, 2021

Approved to as Form:

John P. Kinsey
City Attorney

"DEVELOPER"

Date: March 26, 2021

ODYSSEY AGRICULTURAL DEVELOPMENT, LLC,
a California limited liability company

By: Aaron Mamann (on behalf of Odyssey Insights, Inc.)
Its: Managing Member

"OAH"

Date: March 26, 2021

ODYSSEY AGRICULTURAL HOLDINGS, LLC,
a California limited liability company

By: Aaron Mamann
Its: Managing Member

"VA"

Date: March 26, 2021

VALLEY AGRICULTURAL HOLDINGS, LLC, a California limited liability company

By: Aaron Mamann
Its: Authorized Signatory

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles)

On March 26, 2021 before me, Jeanette Valdez, Notary Public
(insert name and title of the officer)

personally appeared Aaron Mamann,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JEANETTE VALDEZ
Notary Public – California
Los Angeles County
Commission # 2196706
My Comm. Expires May 12, 2021

Signature _____ **(Seal)**

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of Fresno)

On March 30, 2021, before me Celeste Cabrera-Garcia, a Notary Public, personally appeared Cristian Gomez who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

CELESTE CABRERA-GARCIA
Notary Public - California
Fresno County
Commission # 2263396
My Comm. Expires Nov 16, 2022

(Seal)

EXHIBIT "A"

Legal Description

Entire Site:

That portion of the North half of Section 32, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, according to the official plat thereof, in the City of Mendota, County of Fresno, State of California, described as follows:

Commencing for reference at the Northwest corner of said Section 32; thence

South 1°30'52" West, along the West line of said Section 32, a distance of 736.94 feet; thence

South 89°00'35" East, 135.56 feet to the Northwest corner of that parcel described in the Grant Deed recorded as Document 2009-0093031, Official Records of Fresno County; thence

South 89°00'35" East, along the North line of said parcel, 1401.95 feet to the Northeast corner of said parcel and the TRUE POINT OF BEGINNING; thence

South 89°00'35" East, along the easterly prolongation of said North line, 1622.80 feet, more or less, to the East line of that parcel conveyed to the City of Mendota by the Grant Deed recorded as Document 2007-0027736, Official Records of Fresno County; thence

South 1°30'52" West, along said East line, 1610.64 feet, more or less, to the Southeast corner of last said parcel; thence

North 89°00'35" West, along the South line of last said parcel, 1622.75 feet, more or less, to the Southeast corner of said parcel described in Document 2009-0093031; thence

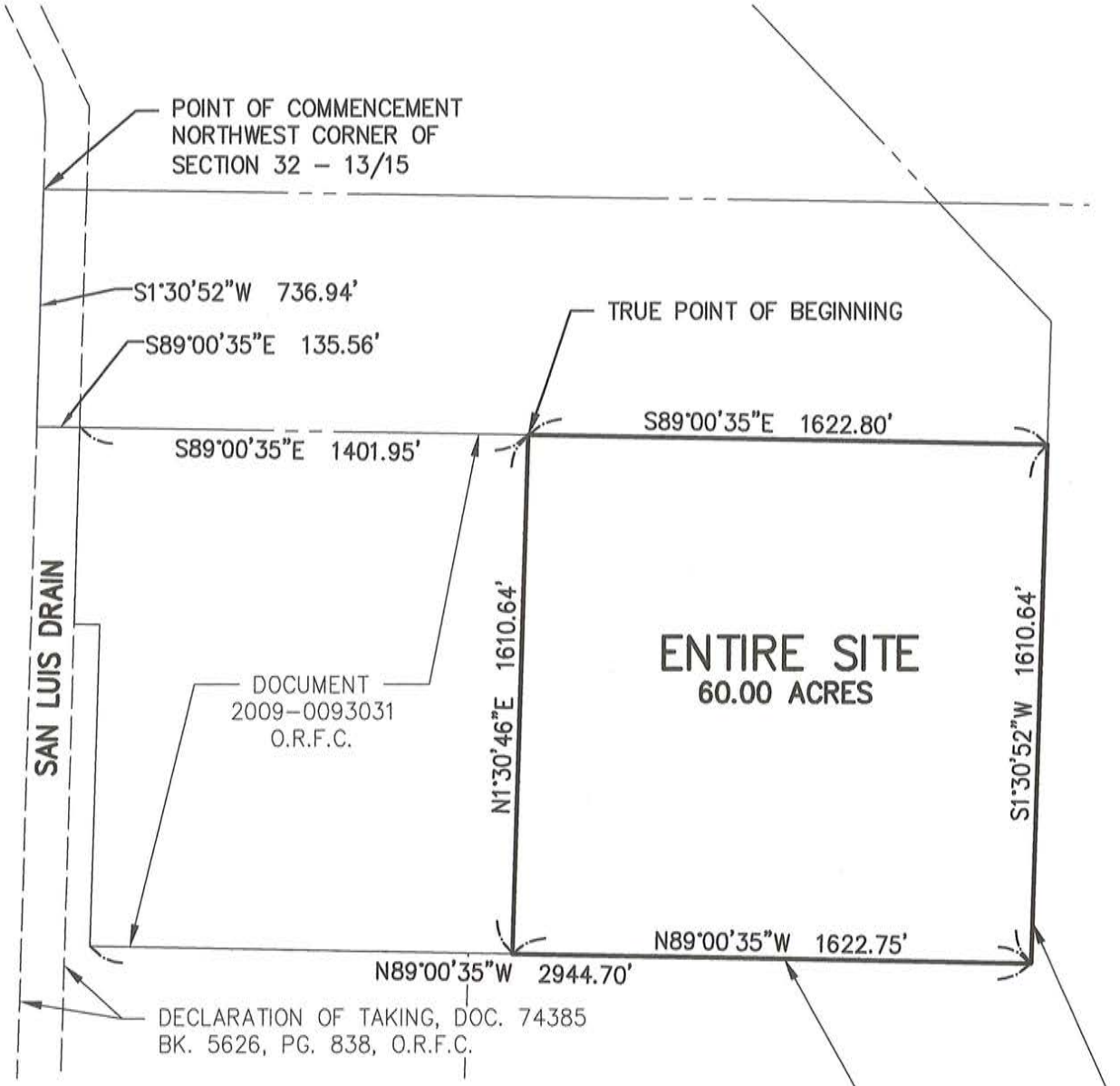
North 1°30'46" East, along the East line of said parcel described in Document 2009-0093031, a distance of 1610.64 feet to the TRUE POINT OF BEGINNING.

Containing an area of 60.00 acres, more or less.

END OF DESCRIPTION

2/1/21

APN 013-030-68ST (portion)



2/1/21

SCALE IN FEET

0 250 500 1000

EST. 1968
PROVOST& PRITCHARD
CONSULTING GROUP
An Employee Owned Company

A PORTION OF THE NORTH HALF OF SECTION 32
TOWNSHIP 13 SOUTH, RANGE 15 EAST, M.D.B.&M.

CITY OF MENDOTA

EXHIBIT B

LAND SURVEYOR: T. ODOM, PLS 8468
DATE: 1/29/2021
JOB NO: 333620013
SHEET 1 OF 1

2/1/2021 10:56 AM G:\Mendota_City of-3335\3335 On-Going Planning Services\City Project Files\333620013-2023 - 20-23 - Valley Ag Holdings (AXIOM)\Survey\Background & Working Docs\Exhibit B - Entire Site map.dwg - Tim Odom

EXHIBIT "C"

Legal Description

OAH Parcel:

That portion of the North half of Section 32, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, according to the official plat thereof, in the City of Mendota, County of Fresno, State of California, described as follows:

Commencing for reference at the Northwest corner of said Section 32; thence

South 1°30'52" West, along the West line of said Section 32, a distance of 736.94 feet; thence

South 89°00'35" East, 135.56 feet to the Northwest corner of that parcel described in the Grant Deed recorded as Document 2009-0093031, Official Records of Fresno County; thence

South 89°00'35" East, along the North line of said parcel, 1401.95 feet to the Northeast corner of said parcel and the TRUE POINT OF BEGINNING; thence

South 89°00'35" East, along the easterly prolongation of said North line, 973.67 feet; thence

South 1°30'46" West, parallel with the East line of said parcel described in Document 2009-0093031, a distance of 1610.64 feet, more or less, to the South line of that parcel conveyed to the City of Mendota by the Grant Deed recorded as Document 2007-0027736, Official Records of Fresno County; thence

North 89°00'35" West, along the South line of last said parcel, 973.67 feet, more or less, to the Southeast corner of said parcel described in Document 2009-0093031; thence

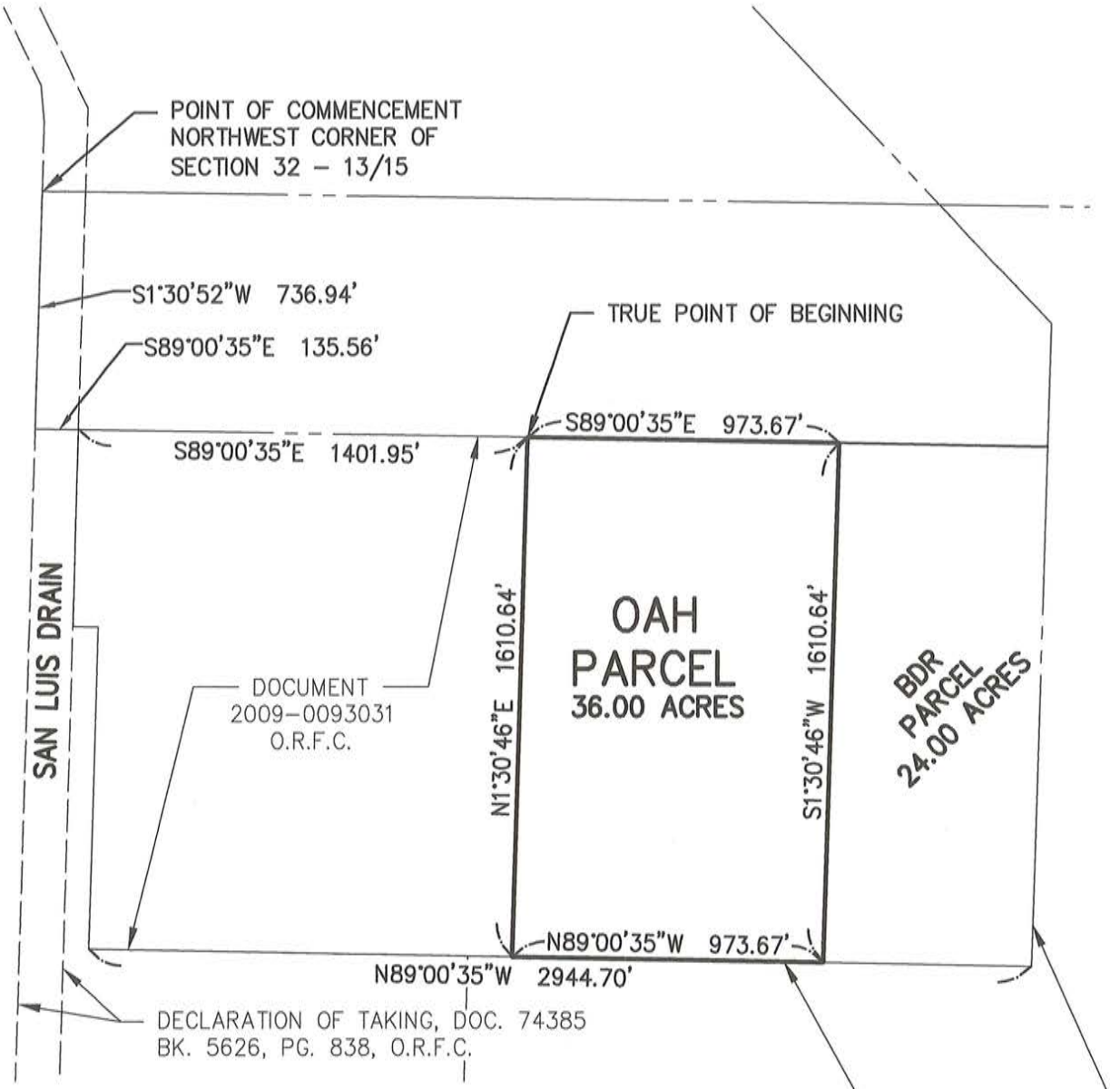
North 1°30'46" East, along the East line of said parcel described in Document 2009-0093031, a distance of 1610.64 feet to the TRUE POINT OF BEGINNING.

Containing an area of 36.00 acres, more or less.

END OF DESCRIPTION

2/4/21

APN 013-030-68ST (portion)



2/4/21

SCALE IN FEET

0 250 500 1000

EST. 1968
PROVOST& PRITCHARD
CONSULTING GROUP
An Employee Owned Company

A PORTION OF THE NORTH HALF OF SECTION 32
TOWNSHIP 13 SOUTH, RANGE 15 EAST, M.D.B.&M.
ODYSSEY AGRICULTURAL DEVELOPMENT, LLC
CITY OF MENDOTA

EXHIBIT D

LAND SURVEYOR: T. ODOM, PLS 8468
DATE: 2/4/2021
JOB NO: 333620013
SHEET 1 OF 1

2/4/2021 3:37 PM G:\Mendota_City of-3336\3336 On-Going Planning Services\City Project Files\333620013-2023 - 20-23 - Valley Ag Holdings (ADDM)\Survey\Background & Working Docs\Exhibit D - Parcel 1 mxp.dwg -Tim Odom

Exhibit E

Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at _____, Mendota, California 93640 ("Agreement"), if Developer, OAH, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, OAH, and VA that Developer, OAH, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is _____. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of _____ ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by _____.

_____ _____

City Manager Date
City of Mendota

Exhibit F

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Mendota
643 Quince St, Mendota, CA 93640
Attention: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §6103

Notice of Termination

Pursuant to Article 9, Section 9.1 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at _____, Mendota, California 93640 ("Agreement"), _____ informs _____ that the Agreement is hereby terminated, in accordance with the terms and conditions as stated therein, pursuant to Article ___, Section ____.

In accordance with Article 9, Section 9.1 of the Agreement, City shall record this Notice of Termination.

_____ _____

Title: Date
Entity:

Exhibit G

Assignment and Assumption Agreement

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made and entered into this ___ day of _____, _____, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California ("City"), and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA") (Developer, OAH, and VA collectively, "Assignors"), and _____, a _____ ("Assignee"). City, Assignors, or Assignee may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

A. City and Assignors entered into a development agreement, dated _____, for the development of property located at _____, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-030-68ST ("Development Agreement"), attached hereto as Exhibit "1" and incorporated herein by this reference;

B. Pursuant to Article 10, Section 10.1 of the Development Agreement, Assignors may transfer all or part of its rights, title, and/or interests in all or a portion of Site, or Project, as those terms are defined in the Development Agreement, to any person, firm, corporation, or entity during the Term of the Development Agreement only with the advance written consent of the City Manager, who shall not unreasonably withhold or condition such consent;

C. Assignors desire to transfer to Assignee some or all of Assignors' rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement;

D. Assignee desires to assume some or all of Assignors' rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement;

E. The City Manager has agreed to permit Assignors' transfer of some or all of Assignor's rights and obligations under the Development Agreement to Assignee, and to Assignee's assumption of same, subject to the terms and conditions specified in this Agreement;

F. The Parties intend through this Agreement to allow Assignors to transfer, and Assignee to assume, some or all of Assignors' rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement.

G. The City Council has conducted all necessary proceedings in accordance with City's Municipal Code for the approval of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of

which are hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

Section 1. Assignment. Assignors hereby assign to Assignee (all/some) of Assignors' rights and obligations under the Development Agreement. If Assignor is transferring only some of Assignor's rights and obligations under the Development Agreement, then the specific rights and obligations subject to transfer shall be specified in Exhibit "1," attached hereto and incorporated herein by this reference.

Section 2. Assumption. Assignee hereby accepts and assumes the foregoing transfer or assignment of (all/some) of Assignors' rights and obligations under the Development Agreement.

Section 3. Consent. In accordance with Article 10, Section 10.1 of the Development Agreement, the City Manager hereby consents to Assignors' transfer of, and Assignee's assumption of, Assignor's rights and obligations under the Development Agreement, as specified herein, subject to any reasonable terms and conditions the City Manager may require, as set forth in Exhibit "2," attached hereto and incorporated herein.

Section 4. Conditions of Assignment. The Parties hereby agree to abide by the terms or conditions of assignment, if any, set forth in Exhibit 2, and acknowledge that City's consent would not have been provided but for the Parties' agreement to abide by the terms or conditions of assignment.

Section 4. Effective Date. The assignment and assumption of rights and obligations as specified herein shall be effective on _____.

Section 5. Terms of the Development Agreement. The terms of the Development Agreement are incorporated herein by this reference. Assignors acknowledge and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Development Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein.

Section 6. Inconsistency. In the event of any conflict or inconsistency between the terms of the Development Agreement and the terms of this Agreement, the terms of the Development Agreement shall govern.

Section 7. Further Actions. Each of the Parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of the other Parties hereto, such further instruments of transfer and assignment and to take such other action as such the other Parties may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Agreement.

"CITY"

Date: January _____, 2021

CITY OF MENDOTA,
a California Municipal Corporation

_____
By: Cristian Gonzalez
Its: City Manager

Attest:

_____
_____
City Clerk

Date: January _____, 2021

Approved to as Form:

_____
John P. Kinsey
City Attorney

"DEVELOPER"

Date:_____

ODYSSEY AGRICULTURAL
DEVELOPMENT, LLC,
a California limited liability company

_____
By:
Its:

"OAH"

Date:_____

ODYSSEY AGRICULTURAL HOLDINGS,
LLC, a California limited liability company

_____
By:
Its:

"VA"

Date:_____

VALLEY AGRICULTURAL HOLDINGS,
LLC, a California limited liability company

_____
By:
Its:

"ASSIGNEE"

Date:_____

Name:
Corporate Status:

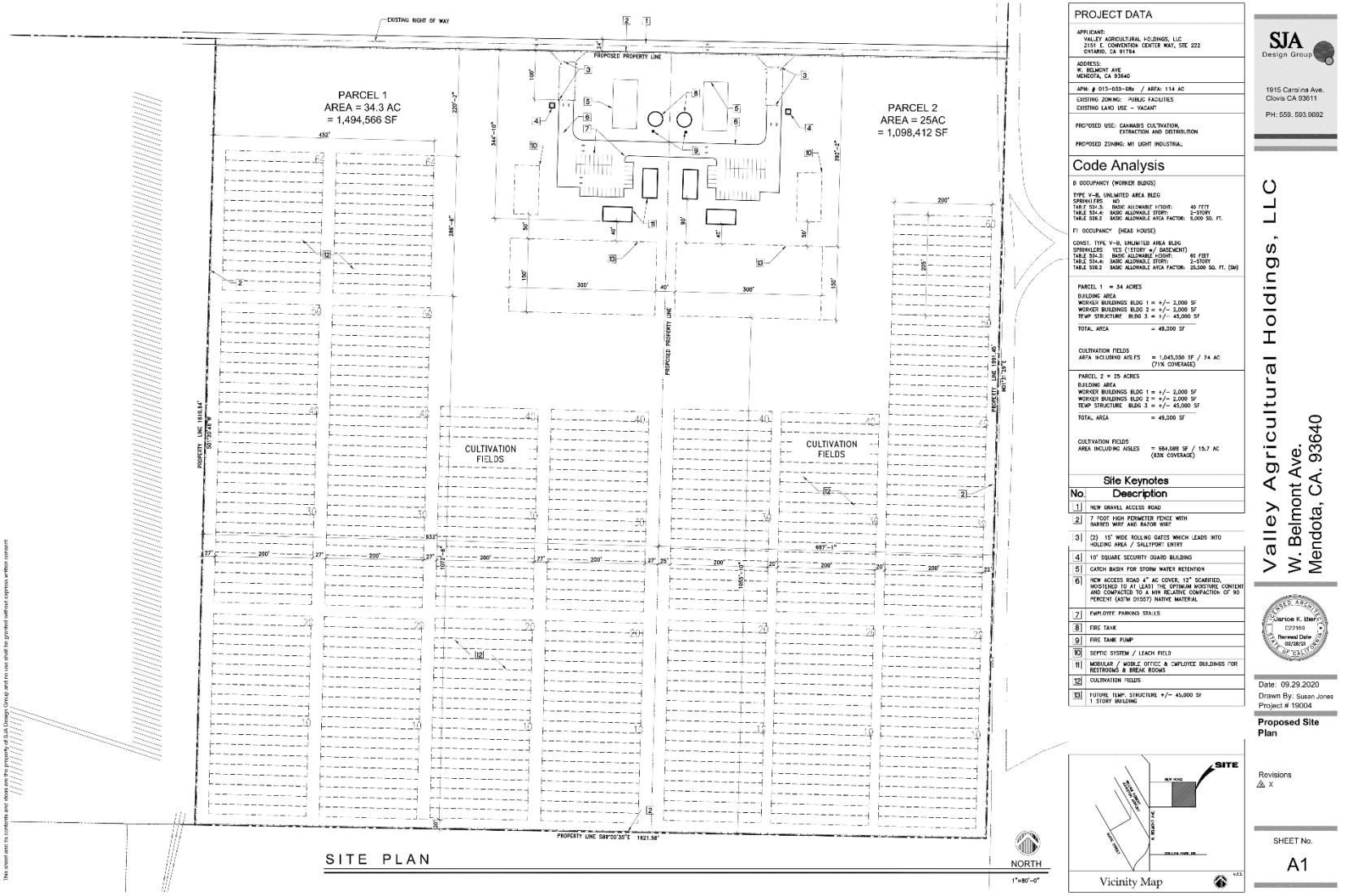
_____
Title:
Name:

Exhibit 1
(Interest Subject to Transfer)

Exhibit 2
(Conditions of Consent)

EXHIBIT 2

EXHBIT “A” TO RESOLUTION NO. PC 20-07
SITE PLAN FOR APPLICATION NO. 20-23



PROJECT DATA

APPLICANT:
VALLEY AGRICULTURAL HOLDINGS, LLC
2151 E. CONVENTION CENTER WAY, STE 222
ONTARIO, CA 91764

ADDRESS:
W. BELMONT AVE
MENDOTA, CA 93640

APN: # 013-030-08s / AREA: 114 AC

EXISTING ZONING: PUBLIC FACILITIES
EXISTING LAND USE – VACANT

PROPOSED USE: CANNABIS CULTIVATION, EXTRACTION AND DISTRIBUTION

PROPOSED ZONING: M1 LIGHT INDUSTRIAL

Code Analysis

B OCCUPANCY (WORKER BLDGS)

TYPE V-B, UNLIMITED AREA BLDG
SPRINKLERS NO
TABLE 504.3: BASIC ALLOWABLE HIGHT: 40 FEET
TABLE 504.4: BASIC ALLOWABLE STORY: 2-STORY
TABLE 506.2 BASIC ALLOWABLE AREA FACTOR: 9,000 SQ. FT.

F1 OCCUPANCY (HEAD HOUSE)

CONST. TYPE V-B, UNLIMITED AREA BLDG
SPRINKLERS YES (1STORY w/ BASEMENT)
TABLE 504.3: BASIC ALLOWABLE HIGHT: 60 FEET
TABLE 504.4: BASIC ALLOWABLE STORY: 2-STORY
TABLE 506.2 BASIC ALLOWABLE AREA FACTOR: 25,500 SQ. FT. (SM)

PARCEL 1 = 34 ACRES
BUILDING AREA
WORKER BUILDINGS BLDG 1 = +/- 2,000 SF
WORKER BUILDINGS BLDG 2 = +/- 2,000 SF
TEMP STRUCTURE BLDG 3 = +/- 45,000 SF
TOTAL AREA = 49,000 SF

CULTIVATION FIELDS
AREA INCLUDING AISLES = 1,043,030 SF / 24 AC
(71% COVERAGE)

PARCEL 2 = 25 ACRES
BUILDING AREA
WORKER BUILDINGS BLDG 1 = +/- 2,000 SF
WORKER BUILDINGS BLDG 2 = +/- 2,000 SF
TEMP STRUCTURE BLDG 3 = +/- 45,000 SF
TOTAL AREA = 49,000 SF

CULTIVATION FIELDS
AREA INCLUDING AISLES = 684,088 SF / 15.7 AC
(63% COVERAGE)

Site Keynotes

No.	Description
1	NEW GRAVEL ACCESS ROAD
2	7 FOOT HIGH PERIMETER FENCE WITH BARBED WIRE AND RAZOR WIRE
3	(2) 15' WIDE ROLLING GATES WHICH LEADS INTO HOLDING AREA / SALLYPORT ENTRY
4	10' SQUARE SECURITY GUARD BUILDING
5	CATCH BASIN FOR STORM WATER RETENTION
6	NEW ACCESS ROAD 4" AC COVER, 12" SCARIFIED, MOISTENED TO AT LEAST THE OPTIMUM MOISTURE CONTENT AND COMPACTED TO A MIN RELATIVE COMPACTION OF 90 PERCENT (ASTM D1557) NATIVE MATERIAL
7	EMPLOYEE PARKING STALLS
8	FIRE TANK
9	FIRE TANK PUMP
10	SEPTIC SYSTEM / LEACH FIELD
11	MODULAR / MOBILE OFFICE & EMPLOYEE BUILDINGS FOR RESTROOMS & BREAK ROOMS
12	CULTIVATION FIELDS
13	FUTURE TEMP. STRUCTURE +/- 45,000 SF 1 STORY BUILDING

SJA Design Group
1915 Carolina Ave.
Clovis CA 93611
PH: 559. 593.9692

Valley Agricultural Holdings, LLC
W. Belmont Ave.
Mendota, CA. 93640

Clarice K. Eberle
(22)166
Renewal Date
02/28/23

Date: 09.29.2020
Drawn By: Susan Jones
Project # 19004

Proposed Site Plan

Revisions
⚠ X

SHEET No.
A1

EXHBIT "B" TO RESOLUTION NO. PC 20-07
CONDITIONS OF APPROVAL
APPLICATION NO. 20-23; PORTION OF APN 013-030-68ST
VALLEY AGRICULTURAL HOLDINGS, LLC

As may be used herein, the words "applicant", "owner," "operator", and "developer" shall be interchangeable, excepting when the word is indicated in ***bold italics***. In that event, the condition of approval is specific to the entity named.

Operations

1. The operator shall acquire and maintain any licenses, approvals, waivers, or similar that may be issued by the State of California requisite to cannabis operations and shall comply with all provisions of any State regulatory agency that may have oversight over said operations.

2. The operator shall acquire and maintain all City of Mendota licenses pursuant to Mendota Municipal Code Chapter 8.37, including payment of applicable fees.

3. The contractor and any subcontractor(s) shall acquire a City of Mendota business license, including payment of any applicable business license fees, prior to commencing construction.

4. The City will monitor the operation for violations of conditions of approval. Penalty for violation may include but is not limited to warnings, fines, and/or permit revocation.

General & Site

5. Approval of this conditional use permit is contingent upon of additional processes contained within Application No. 20-23, to wit:

    a. City Council approval of a proposed amendment to the General Plan Land Use designation of the site from Public/Quasi-Public Facilities to Light Industrial.

    b. City Council approval of a proposed amendment to the zoning of the site from P-F/CO (Public Facilities with the Commercial Cannabis Overlay District) to M-1/CO (Light Manufacturing with the Commercial Cannabis Overlay District).

    c. Recordation of a development agreement pursuant to MMC Section 8.37.050(1).

    d. Conveyance of the Project Site from the City of Mendota to the Applicant as detailed in the purchase and sale agreement approved October 22, 2019.

6. The conditional use permit detailed within Application No. 20-23 shall expire two (2) years following the date of its approval unless, prior to expiration, a building permit for the requested site modifications is issued by the City of Mendota and construction is commenced and being diligently pursued. At the discretion of the City Manager, and upon valid request not less than thirty (30) days prior to its expiration, this conditional use permit may be extended for a period or periods not to exceed two (2) additional years in the aggregate.

7. Development shall comply with all applicable provisions of the City of Mendota General Plan and the Mendota Municipal Code (MMC), including but not limited to: potable water protection regulations (Chapter 13.30), business licensing requirements (Title 5), and Building Code Standards (Title 15); the Subdivision Ordinance (Title 16); the regulations of the applicable zone district(s) and other relevant portions of the Zoning Ordinance (Title 17); and the City of Mendota Standard Specifications and Standard Drawings, unless exceptions therefrom are approved by the City Engineer.

8. Use of the site shall conform to all applicable requirements for the M-1 Light Manufacturing Zone District as modified by the provisions of the CO Commercial Cannabis Overlay District.

9. The site plan shall be revised to reflect the comments of the City Engineer and City Planner provided October 31, 2020 and to depict locations and dimensions of existing and proposed features, utilities, and other improvements.

10. Construction drawings (building and improvement plans; site, grading, irrigation, and landscaping, as applicable) shall be submitted to the Planning and Building Department and City Engineer for review and approval. A building permit shall be acquired prior to start of any construction activities.

11. No new landscaping is required. Any existing landscaping damaged or destroyed as a result of construction shall be repaired or replaced in-kind by the applicant at the discretion of the City Planner.

12. The applicant shall provide a lighting plan for the review and approval of the City Engineer. All exterior lights shall be shielded or otherwise oriented to prevent disturbance to surrounding or neighboring properties or traffic on abutting rights-of-way.

13. The applicant shall consult with and shall comply with the requirements of the San Joaquin Valley Air Pollution Control District, including but not limited to compliance with Regulation VIII (Fugitive PM_{10} Prohibitions) and Rule 9510 (Indirect Source Review).

14. The applicant shall consult with and shall comply with the requirements of the Fresno County Fire Protection District/CAL FIRE, including but not limited to requirements related to sprinklers, fire hydrants, and fire access.

15. The developer shall comply with Health and Safety Code Section 7050.5 and Public Resources Code Sections 5097.98, and 21083.2 and related statutes regarding regulation of cultural and historical resources that may be discovered on the site.

16. Development and operation of the project site shall be in substantial conformance with the Site Plan dated September 29, 2020 and the operational statement dated October 13, 2020 as incorporated herein by reference. The City Planner shall determine the extent to which incremental or minor changes to the site plan, the landscape plan, and/or the operational statement meet this requirement.

17. Following any changes made to the site plan as a result of these conditions or other commentary, correspondence, or official requirement, the applicant shall submit a copy of the final site plan as revised to the Planning Department for inclusion in the project file. Changes made pursuant to these conditions shall be considered minor or incremental.

18. Prior to issuance of a certificate of occupancy, all relevant conditions of approval shall be verified as complete by the Planning Department, and any and all outstanding fees shall have been paid. Any discrepancy or difference in interpretation of the conditions between the subdivider and the Planning Department shall be subject to review and determination by the Planning Commission.

19. All above-ground features including but not limited to lighting, fire hydrants, postal boxes, electrical and related boxes, and backflow devices shall be installed outside of the public-right-of-way. All utilities shall be installed underground.

20. Hours of construction shall be limited to 6:00 AM to 7:00 PM, Monday through Saturday.

21. Construction debris shall be contained within an on-site trash bin and the project site shall be watered for dust control during construction.

22. Any non-structural fencing shall be subject to approval by the Community Development Department consistent with Standard Drawing Nos. M-3 through M-7.

23. The applicant shall comply with all relevant components of the California Building Code and associated trade codes.

24. All signage must be approved pursuant to the standards and guidelines of the Mendota Municipal Code prior to installation.

25. Development shall at all times respect existing or new easements by, for, and between all private and public entities, including but not limited to the City of Mendota.

26. It shall be the responsibility of the subdivider to grant/secure easements as necessary for the installation and maintenance of private utilities, including but not limited to electricity, gas, telephone, and cable television.

27. Connection points for water and wastewater shall be determined by the City Engineer. Connections shall be made in accordance with City of Mendota standards and shall be coordinated with the Director of Public Utilities.

28. The applicant shall comply with the City of Mendota Cross-Connection Control Regulations contained within MMC Section 13.24.

29. The applicant shall coordinate with the City Engineer and Mid Valley Disposal to establish necessary solid waste procedures and facilities.

Water System Improvements

30. The project is subject to the provisions of the Conditional Will-Serve Letter issued by the City of Mendota on September 8, 2020.

31. The site plan shall be revised to illustrate existing and proposed water facilities.

32. The project shall make connection(s) to the City water system as determined by the City Engineer.

33. The improvement plans shall include the location of existing water mains, valves, and valve boxes located in adjacent streets that the proposed water system is to be connected to.

34. All connections to the existing water mains shall include a temporary reduced pressure double check backflow preventer (see Standard Drawing No. W-8) and follow the connection procedures outlined in that standard, or exhibit compliance with AWWA Standard C651-05.

35. Fire hydrants shall be spaced not to exceed 300 feet on center and shall be individually valved between the hydrant and the water system.

36. Fire flow conditions are subject to review and approval by the Fresno County Fire Protection District/CAL FIRE.

37. A meter, meter box, and service shall be installed to each unit. Applicant shall obtain meter type, size and service requirements from the Public Utilities Department and/or the City Engineer. The construction of the water service with meter shall be installed per Standard Drawing No. W-1 and Standard Specifications.

38. All water meters shall be Badger Model E Series with Nicor Connector (E-Series Ultra Plus for sizes 3/4” and 5/8”) with Badger Model Orion CMNA-N Cellular Endpoint with Nicor Connector fully loaded with through lid mounting kit

39. No water services are allowed within drive approaches.

40. The project shall comply with City of Mendota's Automated Water Meter Reading System

Sewer System Improvements

41. The site plan shall be revised to illustrate existing and proposed sewer facilities.

42. The project shall connect make connection(s) to the City wastewater system as determined by the City Engineer.

43. No sewer laterals are allowed within driveways. All laterals and cleanouts shall be installed per Standard Drawings No. S-7A and M-1.

Storm Drain Improvements

44. To ensure proper spacing between underground facilities and allow for unimpeded placement of brass cap monuments in the road surfaces at the intersections of the streets, the location of sewer mains shall conform to Standard Drawing No. M-1.

45. Storm drainage facilities shall be constructed per City of Mendota Standard Drawings and Specifications.

46. If applicable, valley gutter construction shall be consistent with City of Mendota Standard Drawing No. ST-14 unless an alternate design is approved by the City Engineer.

Streets

47. The applicant shall provide for acquisition of any and all necessary easements to accommodate access to the site from the current northerly terminus of Belmont Avenue.

48. Any work within the City of Mendota right-of-way shall require an encroachment permit.

49. Any work within Caltrans right-of-way shall require an encroachment permit.

50. All concrete work, including curbs, gutters, valley gutters, sidewalks, drive approaches, curb ramps, and other concrete features shall contain a minimum of six (6) sacks of cementous material per cubic yard unless otherwise approved by the City Engineer.

51. Any broken, damaged, or substandard sidewalk, curb, gutter, or pavement along the project frontages, or any of the above damaged during construction wherever located, shall be removed and replaced as directed by the City Engineer consistent with City Standard Drawings.

52. Drive approaches, as necessary, shall be installed consistent with Standard Drawing No. ST-15.

Fees

53. This project is also subject to a development agreement. Fees discussed in that agreement are not included herein and are in addition to this section.

54. The applicant shall be responsible for payment of any and all outstanding planning, building, plan check, engineering, and attorney fees prior to issuance of a certificate of occupancy. This shall include all fees incurred by the City's consultants or contract staff resulting from preliminary review, correspondence, review of formal application materials, peer review of documents, processing of application materials, attendance at and/or participation in meetings and conference calls, or other services rendered in relation to the project.

55. Concurrently with submittal of improvement and/or building plans, the applicant shall deposit with the City of Mendota funds in an amount estimated by the City Engineer and/or Building Official, respectively, to be sufficient to offset costs to the City for review of such plans. In the event that such funds are not sufficient to cover costs to the City, the City Engineer and/or Building Official, as appropriate, shall contact the applicant to request additional funds, which the applicant shall then deposit with the City.

56. The applicant shall pay to the City of Mendota development impact fees consistent with the City's current Development Impact Fee Schedule (January 2007). Fees are due in full prior to issuance of a certificate of occupancy.

57. The applicant shall be responsible for payment of fees to the Mendota Unified School District and shall provide the City with evidence of payment, or evidence of the District's determination that no payment is required, prior to issuance of a certificate of occupancy.

58. The applicant shall be responsible for payment of Fresno County Regional Transportation Mitigation Fees and Fresno County Public Facilities Impact Fees and shall provide the City with evidence of payment, or evidence of the County's determination that no payment is required, prior to issuance of a certificate of occupancy.

EXHIBIT 3

AGENDA

CITY OF MENDOTA

"Cantaloupe Center Of The World"

VIA U.S. MAIL & EMAIL:

MichaelJensen@odyssey-insights.com

Odyssey Agricultural Development, LLC
2222 E Olympic Blvd
Los Angeles, CA 90021
Attn: Legal Department

Re: Conditional Use Permit Revisions and Delayed Enforcement

The City of Mendota ("City") has received your requests to modify the site plans that were attached to and approved alongside your Conditional Use Permit ("CUP") in Planning Commission Resolution No. 20-07 and Development Agreement ("DA") in City Council Ordinance No. 21-03.

As presented during the August 24, 2021, City Council meeting, the revised site plans contemplate dividing the multiple commercial cannabis license uses from within one (1) 45,000 square-foot building to eight (8) separate structures of the following sizes:

- One (1) 9,000 square-foot greenhouse building;
- Two (2) 10,000 square-foot processing/manufacturing buildings;
- One (1) 10,000 square-foot building for corporate offices and employee break rooms;
- One (1) 18,000 square-foot distribution building;
- One (1) 30,000 square-foot drying/processing building;
- One (1) 30,000 square-foot manufacturing/drying/processing building; and
- One (1) 64,000 square-foot indoor cannabis cultivation building.

As with the original site plans, the revised site plans contemplate using the remainder of the site for outdoor cannabis cultivation. Discussions with your representatives have clarified the proposed site reorganization will not affect the total square footage allocated to outdoor cannabis cultivation on the property.

The CUP tasks the City with monitoring the operation of your facility for violations of the conditions of approval. (CUP, Operations, § 4.) As approved, the site plans should "depict locations and dimensions of existing and proposed features, utilities, and other improvements." (CUP, General & Site, § 9.)

> Development and operation of the project site shall be in substantial conformance with the Site Plan dated September 29, 2020 and the operational statement dated October 13, 2020 as incorporated herein by reference. **The City Planner shall determine the extent to**

643 Quince Street Mendota, California 93640
Telephone: (559) 655-3291 Fresno Line: (559) 266-6456 Fax: (559) 655-4064
TDD/TTY 866-735-2919 (English) TDD/TTY 866-833-4703 (Spanish)
ci.mendota.ca.us

which incremental or minor changes to the site plan, the landscape plan, and/or the operational statement meet this requirement.

(CUP, General & Site, § 16, emphasis added.)

Following the approval of the CUP, the site plan was flipped on its vertical axis to accommodate site access. This modification was deemed incremental or minor by the City Planner, and no further action was required beyond filing an updated site plan.

In contrast, however, the City Planner has indicated the proposed permanent structure revisions and expansions detailed on the revised site plan discussed above are perceived to result in substantial, increased industrial uses of the site, regardless of whether the commercial cannabis license uses are listed in the CUP and DA. Also, the existing site plans do not contemplate the expansion of your operations in multiple "phases" as presented during the August 24, 2021, City Council meeting. Accordingly, an amendment to the CUP to incorporate the revised site plans and phases of construction must be obtained here. This CUP amendment should be supported by a California Environmental Quality Act ("CEQA") addendum indicating no new environmental impacts will occur as a result of these modifications.

This letter shall serve as notice that, in accordance with Article XI, Section 7 of the California Constitution, the City will exercise its discretion not to expend its enforcement resources to prevent your development of the project site during the pendency of the CUP amendments discussed above. This enforcement discretion is being exercised on a short-term, temporary basis only in recognition of the brief duration of the uses discussed above and your urgent need to proceed to harvest the plants grown in accordance with your existing CUP and DA.

Please be advised that, this letter is non-binding and shall not create any obligation or liability (including any obligation to start or continue negotiations), and no course of conduct or dealing (including, but not limited to, discussions, negotiations, emails, or other correspondence or the exchange of draft documents) shall create any binding obligations on the City's behalf other than fully executed and delivered approvals. (See Cal. Code Regs., tit. 14, §§ 15004, subd. (b)(4), and 15352.) Any confirmation by the City that it has an interest or willingness to perform as laid out herein shall not foreclose the City's future consideration of all relevant alternatives or mitigation measures that CEQA may otherwise require to be considered, including, but not limited to, the alternative of not moving forward with amendments to the project at all. All future project approvals are conditions upon your successful compliance with all statutory and regulatory requirements associated with the successful implementation of the same (e.g. obtaining all discretionary permits, including, but not limited to: CEQA documentation, review, and approvals; final adjudication of any legal challenges based on CEQA; and all environmental, title, physical, water quality, and economic aspects of the project having been assessed and resolved sufficiently for the issuance of an amended conditional use permit).

Accordingly, before engaging in any temporary or permanent construction that conflicts with your existing site plans, you must first execute the attached Acknowledgment and Waiver. In so doing, you will acknowledge your understanding that the City will be conducting a comprehensive review of your forthcoming application for an amended CUP and, as a result, you

may be required to comply with new or different conditions of approval or regulations. In addition, you will agree that, if, after conducting its review, the City adopts new or different conditions of approval or regulations, you will comply with all such regulations and will not claim that your use of the Property constitutes a legal non-conforming use.

Please do not hesitate to contact me if you need to discuss the matters outlined above further.

Very truly yours,

Cristian Gonzalez
City Manager for the City of Mendota

EXHIBIT 4

Acknowledgment and Waiver

I, Odyssey Agricultural Holdings LLC, hereby warrant, acknowledge, and agree to the following:

1. I am the owner, or the authorized agent or representative of the owner, of the property located at 418 W. Belmont Ave., Mendota, CA 93640 ("Property"), and I have the authority to execute this Acknowledgement and Waiver and to bind the owner of the Property to its terms.

2. The City of Mendota ("City") intends to conduct a comprehensive investigation regarding your use of Property within the City for commercial cannabis activity as laid out in the existing and revised site plans for your project and, based on the results of that investigation, to take appropriate action to regulate the activity, including, among other things, to issue a new or amended Conditional Use Permit that conforms to your revised site plans, to establish or modify regulations related to commercial cannabis activity, and any other lawful action the City is authorized to perform in the exercise of its police power.

3. The City's determination that my use of the Property in a manner inconsistent with the existing site plans is made on a short-term, temporary basis only for the purpose of allowing the City sufficient time to conduct a review of the revised site plans and to determine the appropriate manner to regulate said activity.

4. The Property may be subject to new or different regulations or conditions of approval in connection with its modified uses pursuant to the revised site plans.

5. I will comply with any and all laws or regulations currently in effect or hereafter imposed with respect to engaging in any temporary or permanent construction that conflicts with existing site plans, including, but not limited to, any laws, regulations, or conditions imposed as a consequence of any amendment of the City's regulations, any administrative decision regarding my Conditional Use Permit, or any other lawful action of the City.

6. If the City elects to impose new or different regulations or conditions with respect to uses not contemplated by my Conditional Use Permit, I will not claim that my use of the Property constitutes a legal, non-conforming use, or take any other action to continue my use of the Property without complying with such new or different regulations or conditions.

7. I hereby agree to indemnify, defend, and hold harmless the City, its agents, contractors, employees, and successors from and against any and all loss, liability, claim, damage, and expense whatsoever arising out of or based upon engaging in any temporary or permanent construction that conflicts with the existing site plans for commercial cannabis activity, or the imposition in the future of any new or different regulations or conditions on the Property or commercial cannabis activity.

8. I hereby waive and release any and all claims, known or unknown, that I may have against the City, its agents, contractors, employees, and successors arising out of or based upon the use of the Property by engaging in any temporary or permanent construction that conflicts with the existing site plans or any new or different regulations or conditions the City imposes on the Property or commercial cannabis activity in the future. This waiver and release is knowingly made to include unknown claims in accordance with California Civil Code section 1542, which provides, "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

ODYSSEY AGRICULTURAL HOLDINGS LLC

By: Aaron Mamann, Managing Member

Date: October 1, 2021
4

EXHIBIT 5

CITY OF MENDOTA

"Cantaloupe Center Of The World"

Date: January 5, 2022

	Bill To:
Name:	Odyssey
Address:	2222 E. Olympic Blvd
	Los Angeles, CA 90021
Attn:	Legal Department

Description	Amount
Odyssey Development Agreement Public Contribution Payment Quarter February 2nd Payment	$ 150,000.00
Total Amount Due	$ 150,000.00

Due February 2, 2022
Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.

AGENDA

CITY OF MENDOTA

"Cantaloupe Center Of The World"

February 28, 2022

Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at 418 W Belmont Avenue, Mendota, California 93640 ("Agreement"), if Developer, OAH, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, OAH, and VA that Developer, OAH, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is $150,000.00. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of $1,500.00 ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by 3/15/2022.

City Manager
City of Mendota

2/28/2022
Date

Not Paid

643 Quince Street Mendota, California 93640
Telephone: (559) 655-3291 Fresno Line: (559) 266-6456 Fax: (559) 655-4064
TDD/TTY 866-735-2919 (English) TDD/TTY 866-833-4703 (Spanish)
ci.mendota.ca.us

CITY OF MENDOTA

"Cantaloupe Center Of The World"

AGENDA

March 25, 2022

Notice of Interest on Unpaid Non-Performance Late Fee

Pursuant to Article 4, Section 4.6 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at 48 W Belmont Avenue, Mendota, California 93640 ("Agreement"), if Developer, OAH, and/or VA fail to pay the Non-Performance Fee after City has delivered the Notice of Non-Performance Late Fee, then, in addition to the principal amount of the Non-Performance Late Fee, Developer, OAH, and /or VA shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Late Fee, from a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee.

City hereby informs Developer, OAH, and VA that Developer, OAH, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is $1,500.00. Accordingly, pursuant to Section 4.6 of the Agreement, a penalty of $270.00 ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by 3/30/2022.

City Manager
City of Mendota

3/25/2022
Date

643 Quince Street Mendota, California 93640
Telephone: (559) 655-3291 Fresno Line: (559) 266-6456 Fax: (559) 655-4064
TDD/TTY 866-735-2919 (English) TDD/TTY 866-833-4703 (Spanish)
ci.mendota.ca.us

EXHIBIT 6

CITY OF MENDOTA

"Cantaloupe Center Of The World"

Date: April 1, 2022

	Bill To:
Name:	Odyssey
Address:	2222 E. Olympic Blvd
	Los Angeles, CA 90021
Attn:	Legal Department

Description	Amount
Odyssey Development Agreement Public Contribution Payment Quarter May 2nd Payment	$ 150,000.00
Total Amount Due	$ 150,000.00

Due May 2, 2022
Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.

AGENDA

CITY OF MENDOTA

"Cantaloupe Center Of The World"

May 20, 2022

Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at 48 W. Belmont Avenue, Mendota, California 93640 ("Agreement"), if Developer, OAH, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, OAH, and VA that Developer, OAH, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is $150,000.00. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of $1,500.00 ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by 6-6-2022.

City Manager
City of Mendota

5/20/2022
Date

643 Quince Street Mendota, California 93640
Telephone: (559) 655-3291 Fax: (559) 655-4064
TDD/TTY 866-735-2919 (English) TDD/TTY 866-833-4703 (Spanish)
ci.mendota.ca.us

EXHIBIT 7

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CRISTIAN GONZALEZ, CITY MANAGER

SUBJECT: HOLDING THE DEVELOPMENT AGREEMENT ANNUAL REVIEW HEARING FOR ODYSSEY AGRICULTURAL DEVELOPMENT LLC

DATE: JULY 12, 2022

ISSUE

Shall the City Council hold the Development Agreement Annual Review Hearing for Odyssey Agricultural Development LLC?

BACKGROUND

Government Code section 65865.1 provides development agreements "shall include provisions requiring periodic review at least every 12 months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement." (Gov. Code, § 65865.1.) "If, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement." (Gov. Code, § 65865.1.)

Section 8.2 of the Development Agreement with Odyssey Agricultural Development LLC ("Developer") provides:

> Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer, OAH, and/or VA and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or fax to Developer, OAH, and/or VA a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) calendar days prior to such periodic review. Developer, OAH, and/or VA shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer, OAH, and/or VA shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable.

On Tuesday, July 5, 2022, the City of Mendota provided Developer a Notice of Annual Review of Development Agreement (the "Notice). The Notice included the Development Agreement and all Resolutions and Ordinances related to its approval. The Notice also informed Developer

that it would be permitted an opportunity to be heard orally or in writing regarding its performance under the Development Agreement at this hearing.

RECOMMENDATION

Staff recommends that the City Council discuss Odyssey Agricultural Development LLC's performance under the development agreement and provides direction to staff.

Attachment(s):

1. Notice of Annual Review Hearing
2. Development Agreement for Odyssey Agricultural Development LLC
3. Electronic Link to: Documents related to Development Agreement's Approval

AGENDA

CITY OF MENDOTA

"Cantaloupe Center Of The World"

NOTICE OF DEVELOPMENT AGREEMENT ANNUAL REVIEW HEARING
Government Code § 65865.1

VIA U.S. MAIL:

Odyssey Agricultural Development LLC
2222 E Olympic Boulevard
Los Angeles, CA 90021
Attn: Legal Department

Weinberg Gonser LLP
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
Attn: Russell Greenman, Esq.

Re: **Annual Review of Development Agreement, Mendota California**
Odyssey Agricultural Development, LLC

To Whom It May Concern:

On Tuesday, July 12, 2022, at 6:00 p.m., the City of Mendota shall host an annual review hearing to determine the extent of your good faith, substantial compliance with the Development Agreement dated March 26, 2021, between you and the City of Mendota (the "Hearing"). This annual review hearing is scheduled pursuant to Government Code section 65865.1 and Section 8.2 of the Development Agreement. During the Hearing, you shall be permitted an opportunity to be heard orally or in writing regarding your performance under the Development Agreement.

Pursuant to Section 8.2 of the Development Agreement, the City of Mendota has enclosed copies of all staff reports and agenda items related to your performance.

Please contact Cristian Gonzalez, City Manager for the City of Mendota, by phone at (559) 655-3291 or via email at cristian@cityofmendota.com if you have any concerns.

Very truly yours,

Celeste Cabrera-Garcia, MPA, CMC

EXHIBIT 8

AGENDA

ODYSSEY AGRICULTURAL DEVELOPMENT LLC

418 W. BELMONT AVE. | MENDOTA, CA 93640

July 21, 2022

Sent via Email to:
Cristian Gonzalez
City Manager

Re: Odyssey Agricultural Development LLC Development Agreement

Dear City Manager Gonzalez,

I am the President of Odyssey Agricultural Development LLC ("Odyssey") and write in follow up to my presentation to the Mendota City Council on July 12, 2022 ("July 12 Meeting") as part of the annual review of OAD's Development Agreement ("DA") for the property located at 418 W Belmont Ave (the "Property").

Odyssey greatly appreciates the opportunity granted to it by the City of Mendota to develop one of the largest cannabis farms in the state. Odyssey further appreciates the ongoing support provided by the City Manager and his staff and the openness of the City Council to consider ways to improve the City's cannabis licensing program. The purpose of this letter is to present proposals for ensuring that Odyssey and Mendota can achieve the shared goals of the DA.

Development Agreement Background

Odyssey and the City entered into the DA in March 2021 with the shared goal of turning the Property into one of the largest cannabis cultivation complexes in the state, which would employ dozens of Mendota residents and support local businesses and vendors. The DA calls for Odyssey to pay to the City a quarterly public benefit fee ("Public Benefit Fee") of $150,000 or 4% of gross receipts, whichever is greater. Put another way, the City is guaranteed a minimum of $150,000 every quarter, but will be owed more if Odyssey's annual gross receipts exceed $15 million. From the start, Odyssey has intended to fully realize the potential of the Property as soon as possible to generate well over $15 million in gross receipts and thereby significantly increase the size of Public Benefit Fee.

After signing the DA, Odyssey immediately got to work developing the Property, and between June 2021 and October 2021, Odyssey took a vacant 36-acre parcel and turned it into one of the largest outdoor farms in the state with 11 acres of planted fields and over 35,000 square feet of structures. After dealing with intense windstorms and rains and a myriad of other challenges, Odyssey harvested approximately 10,000 pounds of cannabis at the Property.

Unfortunately, the harvest of the first crop coincided with the beginning of the worst downturn in the cannabis market ever experienced in the California. Whereas wholesale prices for premium outdoor flower were around $800-1000/pound at the time Odyssey planted the 11 acres in July, by October wholesale prices had dropped below $200/pound, which made it impossible for Odyssey to even recoup its investment in the cost of harvest, let alone turn a

profit. In fact, to date, Odyssey has generated less than $800,000 in revenue from the first harvest despite investing millions of dollars into the Property. To put that number in context, Odyssey has paid $575,000 in Public Benefit Fees to date, which constitutes approximately 70% of the revenues generated at the Property thus far.

Since October 2021, the market downturn has only worsened, and it is now clear that the California cannabis industry is in for a prolonged price depression. Thousands of cultivators have ceased operations because there is simply no way for them to make a profit or break even under current market conditions. Many predict that only a small percentage of these cultivators will ever plant again.

Despite the incredibly challenging market conditions, Odyssey has stayed true to its word to turn the Property into one of the largest year-round cannabis cultivation farms in California. In February 2022, Odyssey began construction of 48 greenhouses on the Property that, when completed, will allow Odyssey to generate over $15 million per year in gross receipts and employ more than 100 people on the Property full time. This will add to Odyssey's already substantial economic impact in Mendota, which is currently at least $100,000 per month when accounting for money spent at local businesses and wages paid to two dozen Mendota and Firebaugh residents employed full time at the Property.

Realizing the Property's full economic impact, however, will require Odyssey to invest millions more in capital and operational expenditures. Under current market conditions, the cashflows generated by the Property are nowhere near sufficient to cover those capital requirements, and Odyssey, as a self-funded company, cannot call on the support of investors to expedite completion of its developments. While Odyssey will be able to eventually finish developing the Property as promised, it will be significantly delayed in allocating the capital necessary to do so if it must continue to pay Public Benefits Fees over the next year. Put simply, Odyssey faces a choice of paying the Public Benefit Fees or finishing the development as soon as possible. It cannot do both. The delay in completing the development will hurt not just Odyssey, but also the City and its residents who will be left to wait for the far greater Public Benefit Fees and employment that will be realized when the Property is fully developed.

Fee Deferral Request

As discussed at the July 12 Meeting, Odyssey believes it is in the shared interest of Odyssey and the City for the City to grant Odyssey a deferral of payment of the Public Benefits Fees to allow Odyssey to finish development of the Property as soon as possible. Odyssey therefore respectfully requests that the City grant Odyssey a deferral of payment of Public Benefit Fees totaling $600,000 for Q2 2022, Q3 2022, Q4 2022 and Q1 2023 ("Deferred Fees"). Thereafter, Odyssey would pay the Deferred Fees in twelve (12) quarterly installments of $50,000 beginning in Q2 2023. By way of example, in Q2 2023, Odyssey would pay the first $50,000 installment of the Deferral Fee plus the Public Benefit Fee due in that quarter.

Odyssey has demonstrated its commitment to a long-term partnership with the City of Mendota despite facing the worst market conditions ever seen in the cannabis industry. That Odyssey continues to invest millions of dollars to operate and develop the Property (and employ

dozens of Mendota residents) when thousands of its competitors have shut down their operations is proof alone of its commitment to the City. Odyssey is not seeking to evade its commitment to the residents of Mendota; rather it is seeking a path forward through the most challenging of economic circumstances to ensure that it can fully meet it promises under the DA for the long term. Odyssey also certainly understands that a deferral of the Public Benefits Fees will have impacts on the City's current fiscal year budget, however Odyssey, in good faith, fully believes that the City's long-term fiscal position will be improved by helping Odyssey expedite completion of the development of the Property so that its full economic potential can be realized.

Tax Reform Discussion

Odyssey appreciated the recognition by members of the City Council at the July 12 Meeting of the need to discuss long-term reforms to the City's Public Benefit Fee/tax structure for all licensed cannabis businesses in Mendota. The cannabis industry is evolving rapidly – for good and bad – and the lofty projections made by businesses and policymakers alike to justify the enormous taxes on cannabis activity have been brought down to earth by the stark reality of current market conditions. Across the state, policy makers and stakeholders are continuously discussing the proposals to lower taxes, and just last month the State of California eliminated the state cultivation tax. While these initial reforms are welcomed, far more is needed to address the layers of state and local taxes that make cannabis the most taxed industry in the state by a large margin.

Many jurisdictions are now realizing that it is not a given that the cannabis businesses they have licensed will be able to survive and prosper in the long term under existing tax structures. Further, as the industry rapidly consolidates, the largest, most successful operators are increasingly picking jurisdictions to invest in based on the local tax structures. This approach is increasingly becoming a necessity because in the hyper-competitive cannabis industry even a small edge on taxes can give a business a major advantage over its competitors.

Odyssey would welcome the opportunity, alongside its fellow Mendota cannabis businesses, to present to the City Council for its consideration a variety of tax policy proposals to set a foundation for the long-term success of the cannabis industry in Mendota.

I am available at your convenience to discuss these matters further. Thank you.

Sincerely,

/s/Alexander Freedman
President, Odyssey Agricultural Development LLC

cc: Hunter C. Castro, Esq. (hcastro@wjhattorneys.com)
John Kinsey, Esq. (jkinsey@wjhattorneys.com)

EXHIBIT 9

AGENDA

CITY OF MENDOTA

"Cantaloupe Center Of The World"

Date: July 1, 2022

	Bill To:
Name:	Odyssey
Address:	2222 E. Olympic Blvd
	Los Angeles, CA 90021
Attn:	Legal Department

Description	Amount
Odyssey Development Agreement Public Contribution Payment Quarter August 2nd Payment	$ 150,000.00
Total Amount Due	$ 150,000.00

Due August 2, 2022
Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.

CITY OF MENDOTA

"Cantaloupe Center Of The World"

AGENDA

August 12, 2022

Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at 418 W. Belmont Avenue, Mendota, California 93640 ("Agreement"), if Developer, OAH, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, OAH, and VA that Developer, OAH, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is $150,000.00. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of $1,500.00 ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by 8-29-2022.

City Manager
City of Mendota

8/12/2022
Date

643 Quince Street Mendota, California 93640
Telephone: (559) 655-3291 Fresno Line: (559) 266-6456 Fax: (559) 655-4064
TDD/TTY 866-735-2919 (English) TDD/TTY 866-833-4703 (Spanish)
ci.mendota.ca.us

EXHIBIT 10

AGENDA

CITY OF MENDOTA

"Cantaloupe Center Of The World"

September 30, 2022

VIA CERTIFIED MAIL AND E-MAIL:
alex@traditional.com

Odyssey Agricultural Development, LLC
2222 E. Olympic Blvd.
Los Angeles, CA 90021
Attention: Legal Department

Valley Agricultural Holdings, LLC
2151 E. Convention Center Way, Suite 222
Ontario, CA 91764
Attention: Richard Munkvold

Odyssey Agricultural Holdings, LLC
2222 E. Olympic Blvd.
Los Angeles, CA 90021
Attention: Legal Department

Valley Agricultural Holdings, LLC
2151 E. Convention Center Way, Suite 114
Ontario, CA 91764
Attention: Steven B. Imhoof, Esq.

Weinberg Gonser LLP
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
Attention: Russell Greenman, Esq.

Re: Request for Audit Records; Request for Cure of Default
City of Mendota Development Agreement

To Whom It May Concern:

I. Request for Audit Records

I am writing to request copies of all audit records due and reportable to the City of Mendota ("City") pursuant to Article 4 of the March 26, 2021, Development Agreement between Odyssey Agricultural Development, LLC ("Developer"), Odyssey Agricultural Holdings, LLC ("OAH"), Valley Agricultural Holdings, LLC ("VA"; collectively with Developer and OAH, "Developers"), and the City. To date, the City has not received any State Licensing Authority or State Tax Authority reports made by Developers, if any.

The relevant portions of the Development Agreement are reproduced below for your convenience:

> **Section 4.3. Reporting. Developer, OAH, and/or VA shall provide City with copies of any reports provided to a State Licensing Authority or a State Taxing Authority within forty-five (45) calendar days of that submission.** Failure or refusal of Developer, OAH, and/or VA to (a) provide any such report to City, State Licensing Authority, or the State Taxing Authority within the time required by that entity, or (b) pay the Public Benefit Amount or amount due to a State Licensing Authority or State Taxing Authority when the same are due and payable, shall constitute full and sufficient grounds for the revocation or suspension of the

> Conditional Use Permit and all entitlements associated with the Project.
>
> **Section 4.4. Records.** Subsequent tenants or assignees shall keep records of all Commercial Cannabis Activity in accordance with Chapter 16 (commencing with Section 26160) of Division 10 of the Business and Professions Code and the State Retail Cannabis Regulations. **All records required by this Article 4 shall be maintained and made available for City's examination and duplication (physical or electronic) at the Site or at an alternative facility as approved in writing by the City Manager or his or her designee. Upon request, Developer, OAH, and/or VA shall make all records relating to this Article 4 available to the City within three (3) calendar days.**

(Development Agreement, §§ 4.3, 4.4, emphasis added.)

Please contact my office if you have any questions or require assistance regarding the logistics of making this production of records to the City.

II. Request for Cure of Default

The City Council reviewed Developers' proposal dated July 21, 2022, wherein Developers requested a year's forbearance of the public benefit fees ($600,000/year) with quarterly repayment installments to take place over the following three years ($50,000/quarter in addition to the regularly scheduled $150,000/quarter). The City cannot grant this request as it amounts to an interest-free loan which is an impermissible gift of public funds.

Developers are currently in default of the Development Agreement for failing to pay the Public Benefit Fees due to City on May 2, 2022, in the amount of $150,000 and August 2, 2022, in the amount of $150,000, for a total sum of $300,000 currently past due to the City. (See Development Agreement, §§ 4.2, subd. (a)(2)(iii), 4.2, subd. (a)(3), 4.2, subd. (b), 4.3, 4.5, 4.6.) Pursuant to Section 8.1, subdivisions (a) and (e), of the Development Agreement, the City demands Developers cure this default by paying the City all outstanding amounts due within thirty days of the date of this notice. Such deadline to cure Developers' default expires on October 29, 2022.

Thank you,

Cristian Gonzalez
City Manager, City of Mendota

EXHIBIT 11

AGENDA

CITY OF MENDOTA

"Cantaloupe Center Of The World"

Date: November 2, 2022

	Bill To:
Name:	Odyssey
Address:	2222 E. Olympic Blvd
	Los Angeles, CA 90021
Attn:	Legal Department

Description	Amount
Odyssey Development Agreement Public Contribution Payment Quarter November 2nd Payment	$ 150,000.00
Total Amount Due	$ 150,000.00

Due November 2, 2022
Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.

AGENDA

CITY OF MENDOTA

"Cantaloupe Center Of The World"

November 21, 2022

Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at 418 W. Belmont Avenue, Mendota, California 93640 ("Agreement"), if Developer, OAH, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, OAH, and VA that Developer, OAH, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is $150,000.00. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of $1,500.00 ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by 12-6-2022.

City Manager
City of Mendota

11/21/2022
Date

643 Quince Street Mendota, California 93640
Telephone: (559) 655-3291 Fax: (559) 655-4064
TDD/TTY 866-735-2919 (English) TDD/TTY 866-833-4703 (Spanish)
ci.mendota.ca.us

EXHIBIT 12

AGENDA

CITY OF MENDOTA

"Cantaloupe Center Of The World"

November 18, 2022

VIA CERTIFIED MAIL AND E-MAIL:
alex@traditional.com

Odyssey Agricultural Development, LLC
2222 E. Olympic Blvd.
Los Angeles, CA 90021
Attention: Legal Department

Valley Agricultural Holdings, LLC
2151 E. Convention Center Way, Suite 222
Ontario, CA 91764
Attention: Richard Munkvold

Odyssey Agricultural Holdings, LLC
2222 E. Olympic Blvd.
Los Angeles, CA 90021
Attention: Legal Department

Valley Agricultural Holdings, LLC
2151 E. Convention Center Way, Suite 114
Ontario, CA 91764
Attention: Steven B. Imhoof, Esq.

Weinberg Gonser LLP
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
Attention: Russell Greenman, Esq.

Re: Notice of Default and Demand for Cure
City of Mendota Development Agreement

To Whom It May Concern:

I am writing in connection with the March 26, 2021, Development Agreement between Odyssey Agricultural Development, LLC ("Developer"), Odyssey Agricultural Holdings, LLC ("OAH"), Valley Agricultural Holdings, LLC ("VA"; collectively with Developer and OAH, "Developers"), and the City of Mendota ("City").

Developers are currently in default of the Development Agreement for failing to pay the Public Benefit Fees due to City on: May 2, 2022, in the amount of $150,000; August 2, 2022, in the amount of $150,000; and November 2, 2022, in the amount of $150,000, for a total sum of $450,000 currently past due to the City. (See Development Agreement, §§ 4.2, subd. (a)(2)(iii), 4.2, subd. (a)(3), 4.2, subd. (b), 4.3, 4.5, 4.6.) Pursuant to Section 8.1, subdivisions (a) and (e), of the Development Agreement, the City demands Developers cure this default by paying the City all outstanding amounts due within thirty days of the date of this notice. Such deadline to cure Developers' default expires on December 18, 2022.

Thank you,

Cristian Gonzalez
City Manager, City of Mendota

EXHIBIT 13

AGENDA

ODYSSEY AGRICULTURAL DEVELOPMENT LLC

418 W. BELMONT AVE. | MENDOTA, CA 93640

December 13, 2022

Sent via Email to:
Cristian Gonzalez
City Manager

Re: Odyssey Agricultural Development LLC Development Agreement with the City of Mendota ("City")

Dear City Manager Gonzalez,

I write on behalf of Odyssey Agricultural Development LLC ("Odyssey") in follow up to Odyssey's written fee deferral request dated July 21, 2022, and its presentations to the Mendota City Council concerning the same on July 12, 2022, and October 12, 2022.

Despite not having come close to a profit in 18 months of operation at its farm in the City, Odyssey has already paid the City almost $600,000 in public benefit fees and has injected millions of dollars into the local economy. Now, at the worst time in the history of the cannabis industry in California, Odyssey is investing every available dollar to finish development of the farm and make it economically sustainable. This investment will create a foundation for Odyssey to contribute millions of dollars in public benefit fees in years to come. Odyssey greatly appreciates the support of the City thus far and respectfully asks for the City's further support to help realize the full economic potential of the farm.

As of today, the unpaid public benefit fees under Odyssey's Development Agreement total $450,000. On July 21, 2022, Odyssey requested a deferral of these fees plus the Q1 2023 fee in the form of a payment plan of $50,000 per quarter for 12 quarters. Per the default notice dated September 29, 2022, the City rejected this request on the grounds it would constitute a gift of public funds. The City did not provide further detail as to any other objection to the payment plan request. Nonetheless, Odyssey proposes a revised payment schedule for the $450,000 in fees currently outstanding:

Payment Date	**Payment Amount**
January 2023	$100,000
April 1, 2023	$35,000
July 1, 2023	$35,000
October 1, 2023	$35,000
January 1, 2024	$35,000
April 1, 2024	$35,000
July 1, 2024	$35,000
October 1, 2024	$35,000
January 1, 2025	$35,000
April 1, 2025	$35,000
July 1, 2025	$35,000

In addition to the fee deferral proposal, Odyssey wishes to continue the discussion with the City regarding a general reform of the cannabis fee/tax structure in the City. As shared with City officials on numerous occasions, at the end of 2021 the cannabis industry entered a severe downturn that has only worsened over the course of 2022. While there was initial hope that the industry would quickly recover, hard truths about the industry have become apparent, namely that the industry is heading rapidly towards commoditization where profits margins are a small fraction of what they were in the early days of legalization.

Policy makers across the state have responded to the economic reality of the cannabis industry with significant tax reforms, including the State of California's elimination of the state cultivation tax entirely. Many cities and counties have followed suit and adopted significant cannabis tax reform in 2022. Below is a non-exhaustive survey of recent tax reductions adopted in local jurisdictions that are major centers of outdoor cultivation.

Jurisdiction	**Legislative Action**
Monterey County	-Reduced outdoor cultivation tax from $2.50/sq ft to $1/sq ft -Directed County Treasurer to offer cultivators payment plans for taxes owed through 2023
Sonoma County	Reduced cultivation tax by 45% through at least June 30, 2023 -Postponed tax payment due dates and suspended late fees
Calaveras County	-60% reduction in square footage canopy tax rate for cultivators (NOTE: This proposal was considered for adoption on 12/13/22)
Humboldt	-Suspended 85% of cultivation tax for 2021 -Suspended 100% of cultivation tax for 2022 and 2023
Lake County	-Reduced cultivation tax by 50% -Postponed tax payment due dates and waived late fees
Nevada County	-Reduced cultivation tax by 50%

These reforms acknowledge several important facts about cannabis tax policy. First, the original tax structures conceived in the first few years after passage of Proposition 64 have been shown to be a simply incompatible with the development of healthy industry and therefore require long-term reform. Second, the extensive fees and taxes cannabis businesses originally agreed to pay, especially those not pegged entirely to a percentage of gross receipts, have become so untenable in these current market conditions that deferrals and postponements of existing obligations are necessary to keep local cannabis businesses afloat. The fact that so many jurisdictions referenced above have decided to suspend and/or postpone collection of taxes says it all. It also demonstrates that the City of Mendota could take legislative action to defer its collection of fees without running afoul of gift of public funds regulations.

Considering these facts, Odyssey proposes that beginning in 2023, all public benefit fees for cannabis businesses should be calculated based on 2% of a business' quarterly gross receipts. A percent-based fee ensures that the City and cannabis businesses are aligned both in good times and bad. When the cannabis business does well, the City is guaranteed its proportional share that will fund numerous public benefits. When the cannabis business does not do well, the business is not saddled with disproportionate fees that only make it more difficult for the business to recover and generate greater fee revenue in the future. Case in point: despite generating little over $1 million in revenue in 18 months of operation, Odyssey has already incurred $1 million in public benefit fee obligations. No cannabis business can survive, let alone thrive, under such a burdensome tax structure.

In summary, Odyssey proposes payment of the outstanding $450,000 in fees over the course of the next 30 months in addition to a public benefit fee of 2% of quarterly gross receipts beginning in January 2023.

I am available at your convenience to discuss these matters further. Thank you.

Sincerely,

/s/Alexander Freedman
President, Odyssey Agricultural Development LLC

cc: Hunter C. Castro, Esq. (hcastro@wjhattorneys.com)

EXHIBIT 14

AGENDA

NOTICE OF PUBLIC HEARINGS
CITY OF MENDOTA
REGULAR MEETING OF THE PLANNING COMMISSION &
SPECIAL MEETING OF THE CITY COUNCIL

NOTICE IS HEREBY GIVEN THAT, on January 18, 2023, at 6:00 p.m., or as soon thereafter as possible, the Planning Commission of the City of Mendota will hold a public hearing at a special meeting at Mendota City Hall, City Council Chambers, 643 Quince Street, Mendota, CA 93640 to conduct the following business:

1. PUBLIC HEARING TO CONSIDER AND REVIEW STATUS OF DEFAULT, ENTITLEMENTS, AND TERMINATION OF DEVELOPMENT AGREEMENT with ODYSSEY AGRICULTURAL DEVELOPMENT, LLC, ODYSSEY AGRICULTURAL HOLDINGS, LLC, and VALLEY AGRICULTURAL HOLDINGS, LLC, regarding the construction and operation of a cannabis cultivation, processing, and distribution facility on approximately 36 acres (portion of APN 013-030-68ST) located at 418 West Belmont Ave, Mendota, California 93640.

FURTHER NOTICE IS HEREBY GIVEN THAT, on January 18, 2023, at 6:30 p.m., or as soon thereafter as possible, the City Council of the City of Mendota will hold a public hearing at a special meeting at Mendota City Hall, City Council Chambers, 643 Quince Street, Mendota, CA 93640 to conduct the following business:

1. PUBLIC HEARING TO CONSIDER AND REVIEW STATUS OF DEFAULT, ENTITLEMENTS, AND TERMINATION OF DEVELOPMENT AGREEMENT with ODYSSEY AGRICULTURAL DEVELOPMENT, LLC, ODYSSEY AGRICULTURAL HOLDINGS, LLC, and VALLEY AGRICULTURAL HOLDINGS, LLC, regarding the construction and operation of a cannabis cultivation, processing, and distribution facility on approximately 36 acres (portion of APN 013-030-68ST) located at 418 West Belmont Ave, Mendota, California 93640.

All interested persons are invited to appear at the times and places specified above to give testimony regarding the proposed action listed above. Written comments may be forwarded to the City of Mendota at 643 Quince Street. Requests for information may be directed to the City Clerk, Celeste Cabrera-Garcia, at (559) 655-3291 or ccabrera@cityofmendota.com.

If you challenge the above matter(s) in court, you may be limited to raising only those issues you or someone else raised at the Public Hearings, or in written correspondence delivered to the Planning Commission or City Council of the City of Mendota, respectively, at, or prior to, the Public Hearings, or any comments received during the public review period of the associated entitlements.

AGENDA

McClatchy

Beaufort Gazette
Belleville News-Democrat
Bellingham Herald
Bradenton Herald
Centre Daily Times
Charlotte Observer
Columbus Ledger-Enquirer
Fresno Bee
The Herald - Rock Hill
Herald Sun - Durham
Idaho Statesman
Island Packet
Kansas City Star
Lexington Herald-Leader
Merced Sun-Star
Miami Herald
el Nuevo Herald - Miami
Modesto Bee
Raleigh News & Observer
The Olympian
Sacramento Bee
Fort Worth Star-Telegram
The State - Columbia
Sun Herald - Biloxi
Sun News - Myrtle Beach
The News Tribune Tacoma
The Telegraph - Macon
San Luis Obispo Tribune
Tri-City Herald
Wichita Eagle

AFFIDAVIT OF PUBLICATION

Account #	Order Number	Identification	Order PO	Amount	Cols	Depth
19359	368033	Print Legal Ad-IPL01046100 - IPL0104610		$852.96	2	49 L

Attention: Nancy M. Diaz

CITY OF MENDOTA
643 QUINCE ST
MENDOTA, CA 93640

PUBLIC NOTICE

NOTICE OF PUBLIC HEARINGS
CITY OF MENDOTA
REGULAR MEETING OF THE PLANNING COMMISSION &
SPECIAL MEETING OF THE CITY COUNCIL

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IPL0104610
Jan 8 2023

COUNTY OF DALLAS
STATE OF TEXAS

The undersigned states:

McClatchy Newspapers in and on all dates herein stated was a corporation, and the owner and publisher of The Fresno Bee.
The Fresno Bee is a daily newspaper of general circulation now published, and on all-the-dates herein stated was published in the City of Fresno, County of Fresno, and has been adjudged a newspaper of general circulation by the Superior Court of the County of Fresno, State of California, under the date of November 28, 1994, Action No. 520058-9.
The undersigned is and on all dates herein mentioned was a citizen of the United States, over the age of twenty-one years, and is the principal clerk of the printer and publisher of said newspaper; and that the notice, a copy of which is hereto annexed, marked Exhibit A, hereby made a part hereof, was published in The Fresno Bee in each issue thereof (in type not smaller than nonpareil), on the following dates.

1 insertion(s) published on:

01/08/23

Isabel Capps

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated: 01/09/2023

Stephanie Hatcher

Notary Public in and for the state of Texas, residing in Dallas County

STEPHANIE HATCHER
My Notary ID # 133534406
Expires January 14, 2026

Extra charge for lost or duplicate affidavits.
Legal document please do not destroy!

EXHIBIT 15

AGENDA

CITY OF MENDOTA

"Cantaloupe Center Of The World"

Odyssey Agricultural Development, LLC
Attn: Alexander Freedman, President
418 W. Belmont Ave.
Mendota, CA 93640

VIA E-MAIL ONLY:
alex@traditional.com
jon@traditional.com

Re: January 11, 2023, Wire Transfer

To Whom It May Concern:

The City of Mendota ("City") received a wire transfer in the amount of $100,000.00 from Odyssey Agricultural Development, LLC ("Developer"), on January 11, 2023. The City applied this $100,000.00 payment toward the $450,000.00 past due balance Developer owes the City under the parties' Development Agreement. Developer currently has a past due balance of $350,000.00 as of the date of this letter.

Thank you,

Cristian Gonzalez
City Manager, City of Mendota

EXHIBIT 16

AGENDA

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 325463	FOR COURT USE ONLY
NAME: Ryan W. Porte, Esq. FIRM NAME: RAIMONDO | MILLER, ALC STREET ADDRESS: P.O. Box 28100 CITY: Fresno STATE: CA ZIP CODE: 93729 TELEPHONE NO.: (559) 432-3000 FAX NO.: (559) 432-2242 E-MAIL ADDRESS: rwp@raimondomiller.com ATTORNEY FOR (Name): Plaintiff CALZONA AG MANAGEMENT, INC.	E-FILED 1/5/2023 3:08 PM Superior Court of California County of Fresno By: Mitchell Tigchelaar, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO STREET ADDRESS: 1130 "O" Street MAILING ADDRESS: CITY AND ZIP CODE: Fresno, CA 93721 BRANCH NAME: B.F. Sisk Courthouse	
Plaintiff/Petitioner: CALZONA AG MANAGEMENT, INC. Defendant/Respondent: ODYSSEY AG. DEVELOPMENT, LLC, et al.	
REQUEST FOR DISMISSAL	CASE NUMBER: 22CECG01617

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) [ ] With prejudice (2) [x] Without prejudice
   b. (1) [ ] Complaint (2) [ ] Petition
   (3) [ ] Cross-complaint filed by *(name)*: on *(date)*:
   (4) [ ] Cross-complaint filed by *(name)*: on *(date)*:
   (5) [ ] Entire action of all parties and all causes of action
   (6) [x] Other *(specify)*:* Only as to: City of Mendota

2. *(Complete in all cases except family law cases.)*
   The court [x] did [ ] did not waive court fees and costs for a party in this case. *(This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).*

Date: January 5, 2023
Ryan W. Porte, Esq.
(TYPE OR PRINT NAME OF [x] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

▶ Ryan W. Porte
(SIGNATURE)

Attorney or party without attorney for:
[x] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross Complainant

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

3. **TO THE CLERK:** Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF [ ] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

▶
(SIGNATURE)

Attorney or party without attorney for:
[ ] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross Complainant

** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

(To be completed by clerk)

4. [X] Dismissal entered as requested on *(date)*: 1/5/2023
5. [ ] Dismissal entered on *(date)*: as to only *(name)*:
6. [ ] Dismissal **not entered** as requested for the following reasons *(specify)*:

7. a. [X] Attorney or party without attorney notified on *(date)*: 1/5/2023
   b. [ ] Attorney or party without attorney not notified. Filing party failed to provide
   [ ] a copy to be conformed [ ] means to return conformed copy

Date: 1/5/2023 Clerk, by Mitchell Tigchelaar, Deputy

Form Adopted for Mandatory Use
Judicial Council of California
CIV-110 [Rev. Jan. 1, 2013]

Code of Civil Procedure, § 581 et seq.; Gov. Code, § 68637(c); Cal. Rules of Court, rule 3.1390
www.courts.ca.gov